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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2017-0963; Special Conditions No. 25-707-SC]

Special Conditions: Learjet Inc., Model 45 Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comment.

SUMMARY: These special conditions are issued for non-rechargeable lithium battery installations on the Learjet Inc. (Learjet) Model 45 airplane. Non-rechargeable lithium batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Learjet on January 4, 2018. We must receive your comments by February 20, 2018.

ADDRESSES: Send comments identified by docket number FAA-2017-0963 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

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

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, AIR-671, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98057-3356; telephone 425-227-2432; facsimile 425-227-1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in most makes and models of transport-category airplanes. We intend to require special conditions for certification projects involving non-rechargeable lithium battery installations to address certain safety issues until we can revise the airworthiness requirements. Applying special conditions to these installations across the range of transport-category airplanes will ensure regulatory consistency.

Typically, the FAA issues special conditions after receiving an application

for type certificate approval of a novel or unusual design feature. However, the FAA has found that the presence of non-rechargeable lithium batteries in certification projects is not always immediately identifiable, because the battery itself may not be the focus of the project. Meanwhile, the inclusion of these batteries has become virtually ubiquitous on in-production transport category airplanes, which shows that there will be a need for these special conditions. Also, delaying the issuance of special conditions until after each design application is received could lead to costly certification delays. Therefore, the FAA finds it necessary to issue special conditions applicable to these battery installations on particular makes and models of aircraft.

On April 22, 2016, the FAA published special conditions no. 25-612-SC in the **Federal Register** (81 FR 23573) applicable to Gulfstream Aerospace Corporation for the Model GVI airplane. Those were the first special conditions the FAA issued for non-rechargeable lithium battery installations. We explained in that document our decision to make those special conditions effective one year after publication in the **Federal Register**, which is April 22, 2017. In those special conditions, the FAA stated its intention to apply non-rechargeable lithium battery special conditions to design changes on other airplane makes and models applied for after this same date.

Section 1205 of the FAA Reauthorization Act of 1996 requires the FAA to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions when modifying airworthiness regulations that affect intrastate aviation in Alaska. In consideration of this requirement and the overall impact on safety, the FAA does not intend to require non-rechargeable lithium battery special conditions for design changes that only replace a 121.5 megahertz (MHz) emergency-locator transmitter (ELT) with a 406 MHz ELT that meets Technical Standard Order C126b, or later revision, on transport airplanes operating only in Alaska. This will support FAA efforts of encouraging operators in Alaska to upgrade to a 406 MHz ELT. These ELTs provide significantly improved accuracy for

lifesaving services to locate an accident site in Alaskan terrain. The FAA considers that the safety benefits from upgrading to a 406 MHz ELT for Alaska operations will outweigh the battery fire risk.

Comments Invited

The substance of these special conditions has been subjected to the public-notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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

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

Background

Learjet holds type certificate no. T00008WI, which provides the certification basis for the Model 45 airplane. The Model 45 airplane is a twin-engine, transport-category airplanes with a passenger seating capacity of 9 and a maximum takeoff weight of 20,500 pounds.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the Model 45 airplane. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Learjet must show that the Model 45 airplane meets the applicable provisions of the regulations listed in type certificate no. T00008WI or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. In addition, the

certification basis includes certain special conditions, exemptions, or later amended sections that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 45 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 45 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Feature

The novel or unusual design feature is the installation of non-rechargeable lithium batteries.

For the purpose of these special conditions, we refer to a battery and battery system as a battery. A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging.

Discussion

The FAA derived the current regulations governing installation of batteries in transport-category airplanes from Civil Air Regulations (CAR) 4b.625(d), as part of the recodification of CAR 4b that established 14 CFR part 25, in February 1965. This recodification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various

battery cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at <http://www.nts.gov>, filename A-14-032-036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery in an emergency-locator transmitter installation demonstrated unanticipated failure modes. The United Kingdom's Air Accidents Investigation Branch Bulletin S5/2013 describes this event.

Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight-data recorders, underwater-locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication management units, and remote-monitor electronic line-replaceable units;
- Cabin safety, entertainment, and communications equipment, including emergency-locator transmitters, life rafts, escape slides, seatbelt air bags, cabin-management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video-surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

- *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.*, thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.

- *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an

uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

- **Flammability:** Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues, but for the entire battery. Special condition no. 2 requires that the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

Special conditions nos. 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special conditions 3, 7, and 8 are self-explanatory.

Special condition no. 4 makes it clear that the flammable-fluid fire protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable-fluid leakage from airplane systems. Non-rechargeable lithium batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium battery installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation has provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The

means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

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

Applicability

These special conditions are applicable to the Learjet Model 45 airplane. Should Learjet apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after the effective date.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic, or to relocate the installation to improve the safety of the airplane and occupants. Previously certified non-rechargeable lithium battery installations, as used in this paragraph, are those installations approved for certification projects applied for on or before the effective date of these special conditions. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation. These special conditions are also not applicable to unchanged, previously certified non-rechargeable lithium battery installations that are affected by a change in a manner that improves the safety of its installation. The FAA determined that these exclusions are in the public interest because the need to meet all of the special conditions might otherwise deter these design changes that improve safety.

Conclusion

This action affects only certain a novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those

previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Learjet Model 45 airplane.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments, each non-rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.
2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.
3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.
4. Meet the requirements of § 25.863.
5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.
6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.
7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.
8. Have a means for the flightcrew or maintenance personnel to determine the

battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a "battery" and "battery system" are referred to as a battery.

Issued in Renton, Washington, on December 28, 2017.

Suzanne Masterson,

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

[FR Doc. 2017-28454 Filed 1-3-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2017-0483; Special Conditions No. 25-708-SC]

Special Conditions: Airbus Model A330-841 and A330-941 (A330neo) Airplanes; Electronic Flight-Control System; Lateral-Directional and Longitudinal Stability, and Low-Energy Awareness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A330-841 and A330-941 (A330neo) airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is low-energy awareness and directional stability with respect to electronic flight-control systems (EFCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on January 4, 2018. Send your comments by February 20, 2018.

ADDRESSES: Send comments identified by docket number FAA-2017-0483 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow

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- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

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

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

FOR FURTHER INFORMATION CONTACT: Paul Giesman, FAA, Airplane and Flight Crew Interface, AIR-671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98057-3356; telephone 425-227-2790; facsimile 425-227-1320.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. The FAA therefore finds it unnecessary to delay the effective date and finds it unnecessary to delay the effective date and finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The

most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

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

Background

On January 20, 2015, Airbus applied for an amendment to Type Certificate No. A46NM to include the new Model A330-841 (A330-800neo) and A330-941 (A330-900neo) airplanes, collectively marketed as Model A330neo airplanes. These airplanes, which are derivatives of the Model A330-200 and A330-300 airplanes currently approved under Type Certificate No. A46NM, are wide-body, jet-engine airplanes with a maximum takeoff weight of 533,519 pounds and a passenger capacity of 257 (A330-841); and a maximum takeoff weight of 535,503 pounds and a passenger capacity of 287 (A330-941).

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Model A330neo airplanes meet the applicable provisions of the regulations listed in Type Certificate No. A46NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Model A330neo airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A330neo airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-

certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Airbus Model A330neo airplanes will incorporate the following novel or unusual design features:

Low-energy awareness and directional stability functions of the EFCS, which are not sufficiently addressed in Special Conditions (SC) No. 25-ANM-77, "Airbus Industrie Model A330 Series Airplanes," Discussion section item 11, Flight Characteristics.

Discussion

An initial review of the Model A330 and A340 airplanes' SC 25-ANM-77, Discussion section item 11, and subsequent certifications of the Model A340-500/600, A380, and A350 airplanes, revealed that SC 25-ANM-77, item 11, does not address low-energy awareness, nor does it provide similar detail as to the demonstration of directional stability, as has become the standard in later special conditions for Airbus airplanes.

These special conditions, for the Model A330-841 and -941 airplanes, replace the current item 11b and c in SC 25-ANM-77. In addition, these special conditions, in conjunction with the application of part 25, subpart B, at Amendment 25-108 for 1 g stall speeds; and § 25.177(a) and (b) at Amendment 25-135; are intended to parallel the requirements provided in type certifications of Model A340-500 and -600, A380, and A350 airplanes.

In the absence of positive lateral stability, the curve of lateral control-surface deflections against sideslip angle should be in a conventional sense and reasonably in harmony with rudder deflection during steady-heading sideslip maneuvers.

Because conventional relationships between stick forces and control-surface displacements do not apply to the load-factor-command flight-control system on the Model A330-841 and -941 airplanes, longitudinal stability characteristics should be evaluated by assessing the airplane handling qualities during simulator and flight-test maneuvers appropriate to operation of the airplane. This may be accomplished by using the Handling Qualities Rating Method presented in Advisory Circular 25-7C, "Flight Test Guide for Certification of Transport Category Airplanes," Appendix 5, or an acceptable alternative method proposed

by the Airbus. Important considerations are as follows:

1. Adequate speed control without excessive pilot workload,
2. Acceptable high- and low-speed protection, and
3. Provision for adequate cues to the pilot of significant speed excursions beyond V_{MO}/M_{MO} , and low-speed-awareness flight conditions.

The airplane should provide adequate awareness cues to the pilot of a low-energy (low-speed/low-thrust/low-height) state to ensure that the airplane retains sufficient energy to recover when flight-control laws provide neutral longitudinal stability significantly below the normal operating speeds. This may be accomplished as follows:

1. Adequate low-speed/low-thrust cues at low altitude may be provided by a strong positive-static-stability force gradient (1 pound per 6 knots applied through the sidestick), or,
2. The low-energy awareness may be provided by an appropriate warning with the following characteristics:
 - a. It should be unique, unambiguous, and unmistakable.
 - b. It should be active at appropriate altitudes and in appropriate configurations (*i.e.*, at low altitude, in the approach and landing configurations).
 - c. It should be sufficiently timely to allow recovery to a stabilized flight condition inside the normal flight envelope while maintaining the desired flight path, and without entering the flight controls angle-of-attack protection mode.
 - d. It should not be triggered during normal operation, including operation in moderate turbulence for recommended maneuvers at recommended speeds.
 - e. The system should not allow the pilot to cancel the warning, or the low-energy awareness function, other than by achieving a higher energy state.
 - f. The various warnings should have an adequate hierarchy of alert so that the pilot is not confused and led to take inappropriate recovery action if multiple warnings occur at the same time.
3. Global energy awareness and non-nuisance of low-energy cues should be evaluated by simulator and flight tests in the whole take-off and landing altitude range for which certification is requested. This would include all relevant combinations of weight, center-of-gravity position, configuration, airbrakes position, and available thrust, including reduced and derated take-off thrust operations and engine-failure cases. A sufficient number of tests should be conducted, allowing the level

of energy awareness and the effects of energy-management errors to be assessed.

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

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A330-841 and A330-941 (A330neo) airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330-841 and A330-941 (A330neo) airplanes.

In lieu of the requirements of §§ 25.171, 25.173, 25.175, and 25.177(c), the following special conditions apply:

1. The airplane must be shown to have suitable static lateral, directional, and longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The showing of suitable static lateral, directional, and longitudinal stability must be based on the airplane handling qualities, including pilot workload and pilot compensation, for specific test procedures during the flight-test evaluations.

2. The airplane must provide to the pilot adequate awareness of a low-energy (low-speed/low-thrust/low-height) state when fitted with flight-control laws presenting neutral longitudinal stability significantly below the normal operating speeds. "Adequate awareness" means that warning information must be provided

to alert the flightcrew of unsafe operating conditions, and to enable them to take appropriate corrective action.

3. In straight, steady sideslips over the range of sideslip angles appropriate to the operation of the airplane, but not less than those obtained with one-half of the available rudder-control movement (but not exceeding a rudder-control force of 180 pounds), rudder-control movements and forces must be substantially proportional to the angle of sideslip in a stable sense; and the factor of proportionality must lie between limits found necessary for safe operation. This requirement must be met for the configurations and speeds specified in § 25.177(a).

Issued in Renton, Washington, on December 28, 2017.

Suzanne Masterson,

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

[FR Doc. 2017-28453 Filed 1-3-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM18-3-000]

Annual Update of Filing Fees

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with the Commission regulations, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Financial System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2017.

DATES: *Effective Date:* February 5, 2018.

FOR FURTHER INFORMATION CONTACT: Vu-Hang Nguyen, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Room 42-65, Washington, DC 20426, 202-502-8892.

SUPPLEMENTARY INFORMATION:

Document Availability: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

From FERC's website on the internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three

digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's website during normal business hours. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Annual Update of Filing Fees

(Issued December 28, 2017)

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2017 costs. The adjusted fees announced in this notice are effective February 5, 2018. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act

1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	\$13,500
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Fees Applicable to General Activities

1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	27,130
2. Review of a Department of Energy remedial order:	
Amount in controversy	
\$0-9,999. (18 CFR 381.303(b))	100
\$10,000-29,999. (18 CFR 381.303(b))	600
\$30,000 or more. (18 CFR 381.303(a))	39,610
3. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
\$0-9,999. (18 CFR 381.304(b))	100
\$10,000-29,999. (18 CFR 381.304(b))	600
\$30,000 or more. (18 CFR 381.304(a))	20,770
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	7,780

Fees Applicable to Natural Gas Pipelines

1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	* 1,000
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Fees Applicable to Cogenerators and Small Power Producers

1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	23,330
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	26,410

* This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, reporting and recordkeeping requirements.

Anton C. Porter,
Executive Director.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In 381.302, paragraph (a) is amended by removing “\$25,640” and adding “\$27,130” in its place.

§ 381.303 [Amended]

■ 3. In 381.303, paragraph (a) is amended by removing “\$37,430” and adding “\$39,610” in its place.

§ 381.304 [Amended]

■ 4. In 381.304, paragraph (a) is amended by removing “\$19,630” and adding “\$20,770” in its place.

§ 381.305 [Amended]

■ 5. In 381.305, paragraph (a) is amended by removing “\$7,350” and adding “\$7,780” in its place.

§ 381.403 [Amended]

■ 6. Section 381.403 is amended by removing “\$12,760” and adding “\$13,500” in its place.

§ 381.505 [Amended]

■ 7. In 381.505, paragraph (a) is amended by removing “\$22,050” and adding “\$23,330” in its place and by removing “\$24,960” and adding “\$26,410” in its place.

[FR Doc. 2017–28466 Filed 1–3–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****21 CFR Part 1308**

[Docket No. DEA–474]

Schedules of Controlled Substances: Temporary Placement of Cyclopropyl Fentanyl in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to schedule the synthetic opioid, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide (cyclopropyl fentanyl), and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers in schedule I. This action is based on a finding by the Administrator that the placement of cyclopropyl fentanyl in schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, cyclopropyl fentanyl.

DATES: This temporary scheduling order is effective January 4, 2018, until January 4, 2020. If this order is extended or made permanent, the DEA will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:**Legal Authority**

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling¹ for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA,

¹ Though DEA has used the term “final order” with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(h), which refers to a “temporary scheduling order.” No substantive change is intended.

21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.² The Administrator transmitted notice of his intent to place cyclopropyl fentanyl in schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter dated August 28, 2017. The Assistant Secretary responded by letter dated September 6, 2017, and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for cyclopropyl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of cyclopropyl fentanyl in schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary’s comments as required by 21 U.S.C. 811(h)(4). Cyclopropyl fentanyl is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for cyclopropyl fentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of cyclopropyl fentanyl in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule cyclopropyl fentanyl was published in the **Federal Register** on November 21, 2017. 82 FR 55333.

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance’s

² As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary’s scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Available data and information for cyclopropyl fentanyl, summarized below, indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis and the Assistant Secretary's September 6, 2017 letter are available in their entirety under the tab "Supporting Documents" of the public docket of this action at www.regulations.gov under FDMS Docket ID: DEA-2017-0005 (Docket Number DEA-474).

Factor 4. History and Current Pattern of Abuse

The recreational abuse of fentanyl-like substances continues to be a significant concern. These substances are distributed to users, often with unpredictable outcomes. Cyclopropyl fentanyl has been encountered by law enforcement and public health officials beginning as early as May 2017. The DEA is not aware of any laboratory identifications of this substance prior to 2017. Adverse health effects and outcomes of cyclopropyl fentanyl abuse are consistent with those of other opioids and are demonstrated by fatal overdose cases involving this substance.

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are repositied in STARLiMS. Data from STRIDE and STARLiMS were queried on August 25, 2017. STARLiMS registered a total of three reports containing cyclopropyl fentanyl from California, Connecticut, and New York. Of these three exhibits, one had a net weight of approximately

one kilogram. According to STARLiMS, the first laboratory submission of cyclopropyl fentanyl occurred in Connecticut in June 2017.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by other federal, state and local forensic laboratories across the country. NFLIS registered 10 reports containing cyclopropyl fentanyl from state or local forensic laboratories in Oklahoma in July 2017 (query date: August 29, 2017).³

In addition to data recorded in NFLIS and STARLiMS, cyclopropyl fentanyl was identified in drug evidence submitted to state and local forensic laboratories in Georgia and Pennsylvania. Cyclopropyl fentanyl was confirmed in combination with U-47700, another synthetic opioid temporarily controlled in schedule I of the CSA, in 24 glassine paper packets submitted to a law enforcement forensic laboratory in Pennsylvania.⁴ A law enforcement forensic laboratory in Georgia confirmed⁵ the presence of cyclopropyl fentanyl in counterfeit oxycodone tablets which also contained U-47700. The distribution of cyclopropyl fentanyl in these forms, and in combination with another synthetic opioid, suggests that this substance was marketed as heroin or prescription opioids in the illicit market.

Evidence suggests that the pattern of abuse of fentanyl analogues, including cyclopropyl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of cyclopropyl fentanyl have been encountered in powder form, similar to fentanyl and heroin, and in counterfeit prescription opioid analgesics (*i.e.* counterfeit oxycodone tablets). Cyclopropyl fentanyl was also confirmed in toxicology samples from fatal overdose cases.

Factor 5. Scope, Duration and Significance of Abuse

Reports collected by the DEA demonstrate that cyclopropyl fentanyl is being abused for its opioid effects. Abuse of cyclopropyl fentanyl has resulted in mortality (*see* DEA 3-Factor Analysis for full discussion). The DEA collected post-mortem toxicology and

medical examiner reports on 115 confirmed fatalities associated with cyclopropyl fentanyl which occurred in Georgia (1), Maryland (24), Mississippi (1), North Carolina (75), and Wisconsin (14). It is likely that the prevalence of this substance in opioid related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate this fentanyl analogue from fentanyl.

NFLIS and STARLiMS have a total of 13 drug reports in which cyclopropyl fentanyl was identified in drug exhibits submitted to forensic laboratories in 2017 from law enforcement encounters in California, Connecticut, New York, and Oklahoma. In addition to the data collected in these databases, cyclopropyl fentanyl was identified in drug evidence submitted to forensic laboratories in Georgia (counterfeit oxycodone preparation) and Pennsylvania (24 glassine paper packets).

The population likely to abuse cyclopropyl fentanyl overlaps with the population abusing prescription opioid analgesics, heroin, fentanyl and other fentanyl-related substances. This is supported by cyclopropyl fentanyl being identified in powder contained within glassine paper packets and counterfeit prescription opioid products. This is also demonstrated by routes of drug administration and drug use history documented in cyclopropyl fentanyl fatal overdose cases. Because abusers of cyclopropyl fentanyl obtain this substance through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.* use a drug for the first time) cyclopropyl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.*, fentanyl, morphine, etc.).

Factor 6. What, if Any, Risk There Is to the Public Health

With no legitimate medical use, cyclopropyl fentanyl has emerged on the illicit drug market and is being misused and abused for its opioid properties. Cyclopropyl fentanyl exhibits pharmacological profiles similar to that of fentanyl and other μ -opioid receptor agonists. The abuse of cyclopropyl fentanyl poses significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone. The toxic effects of cyclopropyl fentanyl in humans are demonstrated by overdose fatalities involving this substance.

³ Data are still being collected for May 2017–August 2017 due to the normal lag period for labs reporting to NFLIS.

⁴ Email from Philadelphia Police Department–Office of Forensic Science, to DEA (August 18, 2017 11:09 a.m.) (on file with DEA).

⁵ Laboratory report obtained from Division of Forensic Science, Georgia Bureau of Investigation.

Based on information received by the DEA, the misuse and abuse of cyclopropyl fentanyl lead to, at least, the same qualitative public health risks as heroin, fentanyl, and other opioid analgesic substances. As with any non-medically approved opioid agonist, the health and safety risks for users are high. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Cyclopropyl fentanyl has been associated with numerous fatalities. At least 115 confirmed overdose deaths involving cyclopropyl fentanyl abuse have been reported from Georgia (1), Maryland (24), Mississippi (1), North Carolina (75), and Wisconsin (14) in 2017. As the data demonstrate, the potential for fatal and non-fatal overdoses exists for cyclopropyl fentanyl and this substance poses an imminent hazard to the public safety.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of cyclopropyl fentanyl pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for cyclopropyl fentanyl in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for cyclopropyl fentanyl indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, by letter dated August 28, 2017, notified the Assistant Secretary of the DEA's intention to temporarily place this substance in schedule I. A notice of intent was subsequently published in the **Federal Register** on November 21, 2017. 82 FR 55333.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, and herein sets forth the grounds for his determination that it is necessary to temporarily schedule cyclopropyl fentanyl in schedule I of the CSA to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds it necessary to temporarily place this synthetic opioid in schedule I to avoid an imminent hazard to the public safety, this temporary order scheduling cyclopropyl fentanyl is effective on the date of publication in the **Federal Register**, and is in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this temporary order, cyclopropyl fentanyl will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, cyclopropyl fentanyl must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in

accordance with 21 CFR parts 1301 and 1312, as of January 4, 2018. Any person who currently handles cyclopropyl fentanyl, and is not registered with the DEA, must submit an application for registration and may not continue to handle cyclopropyl fentanyl as of January 4, 2018, unless the DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA on or after January 4, 2018 is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle cyclopropyl fentanyl must surrender all currently held quantities of cyclopropyl fentanyl.

3. *Security.* Cyclopropyl fentanyl is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of January 4, 2018.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of cyclopropyl fentanyl must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from January 4, 2018, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of cyclopropyl fentanyl on the effective date of this order must take an inventory of all stocks of this substance on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including cyclopropyl fentanyl) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to cyclopropyl fentanyl pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1312, 1317, and § 1307.11. Current DEA registrants shall have 30 calendar days from the effective

date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute cyclopropyl fentanyl must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312 as of January 4, 2018.

8. *Order Forms.* All DEA registrants who distribute cyclopropyl fentanyl must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of January 4, 2018.

9. *Importation and Exportation.* All importation and exportation of cyclopropyl fentanyl must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of January 4, 2018.

10. *Quota.* Only DEA registered manufacturers may manufacture cyclopropyl fentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of January 4, 2018.

11. *Liability.* Any activity involving cyclopropyl fentanyl not authorized by, or in violation of, the CSA, occurring as of January 4, 2018, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of the Administrative Procedure Act (APA) at 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice and comment requirements of 5 U.S.C. 553, as any further delays in the process for issuance of temporary scheduling orders would be contrary to the public interest

in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action is not a “rule” as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

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

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the Congressional Review Act, “any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.” 5 U.S.C. 808(2). It is in the public interest to schedule this substance immediately to avoid an imminent hazard to the public safety. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA’s need to move quickly to place this substance in schedule I because it poses an imminent hazard to the public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, this order shall take effect immediately upon its publication. The DEA has submitted a

copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(22) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *
(22) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: cyclopropyl fentanyl).....(9845)

Dated: December 28, 2017.

Robert W. Patterson,
Acting Administrator.

[FR Doc. 2017–28470 Filed 1–3–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Chapter I

[Docket ID FEMA–2016–0022]

Revisions to the Public Assistance Program and Policy Guide

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notification of availability.

SUMMARY: This document provides notice of the availability of the final policy *Public Assistance Program and Policy Guide (PAPPG)*.

DATES: FEMA applies the revisions in this policy to incidents declared on or after August 23, 2017, or to any application for assistance that, as of January 1, 2018 is pending before

FEMA, or to any application for assistance that has been denied, where a challenge to that denial is not yet finally resolved as of January 1, 2018.

ADDRESSES: This final policy is available online at <http://www.regulations.gov> and on FEMA's website at <http://www.fema.gov>. The final policy and supporting documents are available at <http://www.regulations.gov> under docket ID FEMA-2016-0022. You may also view a hard copy of the final policy at the Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Christopher Logan, Division Director, Public Assistance, 202-786-0816.

SUPPLEMENTARY INFORMATION: This document announces the availability of the Third Edition of the Public Assistance Program and Policy Guide (PAPPG). The Third Edition revises a statutory and regulatory interpretation related to the eligibility of certain private nonprofit facilities for Public Assistance (PA) under 42 U.S.C. 5172, 42 U.S.C. 5122(11), and 44 CFR 206.221. Specifically, Third Edition clarifies that private nonprofit houses of worship will not be singled out for disfavored

treatment within the "community centers" subcategory of PA nonprofit applicants. Further discussion regarding these revisions is contained in the Foreword to the PAPPG.

This final policy does not have the force or effect of law.

Authority: 42 U.S.C. 5121 *et seq.*

Dated: January 2, 2018.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018-00044 Filed 1-2-18; 4:45 pm]

BILLING CODE 9111-23-P

Proposed Rules

Federal Register

Vol. 83, No. 3

Thursday, January 4, 2018

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitles A and B

9 CFR Chapters I, II, and III

Withdrawal of Certain Proposed Rules and Other Proposed Actions

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of withdrawal.

SUMMARY: The United States Department of Agriculture (USDA) is announcing that it has withdrawn certain advance notice of proposed rulemakings

(ANPRM) and proposed rules that were either published in the **Federal Register** more than 4 years ago without subsequent action or determined to no longer be candidates for final action. USDA is taking this action to reduce its regulatory backlog and focus its resources on higher priority actions. The Department's actions are part of an overall regulatory reform strategy to reduce regulatory burden on the public and to ensure the Spring and Fall 2017 Unified Agendas of Regulatory and Deregulatory Actions provided the public accurate information about rulemakings the Department intends to undertake.

DATES: The advance notice of proposed rulemakings and proposed rules are withdrawn on January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Poe, Telephone Number: (202) 720-3323. Email: Michael.poe@obpa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

USDA reviewed its pending proposed rules and other notices that published in the **Federal Register** more than 4 years ago, and for which no final rule or notice of withdrawal has been issued. The agency identified 14 such regulatory proposals for withdrawal. Additionally, USDA identified two proposed rules for withdrawal because they are not considered candidates for final action at this time.

Although not required to do so by the Administrative Procedure Act or by regulations of the Office of the Federal Register, the agency believes the public interest is best served by announcing in the **Federal Register** that it has withdrawn these 16 items. Therefore, for the reasons set forth above, USDA announces that it has withdrawn the following documents, published in the **Federal Register** on the dates indicated in the table below.

Agency	RIN	Title	Published action	Date	FR cite
FAS	0551-AA68	Quality Samples Program	NPRM	8/03/2006	71 FR 43992
FAS	0551-AA81	Export Sales Reporting Program	NPRM	3/19/2013	78 FR 16819
RUS	0572-AC21	Project Financing—Renewable Energy Loans	ANPRM	6/5/2013	78 FR 33755
RUS	0572-AC32	Rural Determination and Financing Percentage	NPRM	6/5/2013	78 FR 33757
APHIS	0579-AC28	Viruses, Serums, Toxins, and Analogous Products; Detection of Avian Lymphoid Leukosis Virus.	NPRM	1/31/2007	72 FR 4467
APHIS	0579-AC65	Tuberculosis: Require Approved Herd Plans Prior to Payment of Indemnity.	NPRM	7/24/2008	73 FR 43171
APHIS	0579-AD50	Forfeiture Procedures Under the Endangered Species Act and the Lacey Act Amendments.	NPRM	5/21/2013	78 FR 29659
APHIS	0579-AD67	Chrysanthemum White Rust Regulatory Status Restrictions.	ANPRM	8/3/2012	77 FR 46339
AMS	0581-AC83	Farmers' Market Promotion Program	NPRM	1/19/2011	76 FR 3046
AMS	0581-AD24	Hardwood Lumber and Hardwood Plywood Research and Promotion Program.	NPRM	11/13/2013	78 FR 68297
AMS	0581-AD63	Soybean Promotion, Research, and Consumer Information; Beef Promotion and Research; Amendments to Allow Redirection of State Assessments to the National Program; Technical Amendments.	NPRM	7/15/2016	81 FR 45984
FNS	0584-AC72	National School Lunch Program: Reimbursement for snacks in afterschool care programs.	NPRM	10/11/2000	65 FR 60502
Forest Service	0596-AC46	Small Business Administration Timber Sale Set-Aside Program.	NPRM	8/1/2006	71 FR 43435
Forest Service	0596-AC71	Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560.	NPRM	5/6/2014	79 FR 25824
Forest Service	0596-AC89	Enhancing Policies Relating to Partnerships	ANPRM	9/14/2010	75 FR 55710
Forest Service	0596-AD03	Management of Surface Activities Associated with Outstanding Mineral Rights on National Forest System Lands (Directive).	ANPRM	12/29/2008	73 FR 79424

The withdrawal of these proposals identified in this document does not preclude the Department from reinstituting rulemaking concerning the

issues addressed in the proposals listed in the chart. Should we decide to undertake such rulemakings in the future, we will re-propose the actions

and provide new opportunities for comment. Furthermore, this notice is only intended to address the specific actions identified in this document, and

not any other pending proposals that USDA has issued or is considering. The Department notes that withdrawal of a proposal does not necessarily mean that the preamble statement of the proposal no longer reflects the current position of USDA on the matter addressed. You may wish to review the Department's website (<http://www.USDA.gov>) for any current guidance on these matter matters.

Dated: December 26, 2017.

Rebeckah Adcock,

Regulatory Reform Officer and Senior Advisor to the Secretary.

[FR Doc. 2017-28433 Filed 1-3-18; 8:45 am]

BILLING CODE 3410-90-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2017-0051; FXES1113090000-178-FF09E42000]

RIN 1018-BC09

Endangered and Threatened Wildlife and Plants; Removing the Fosskett Speckled Dace From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose to remove the Fosskett speckled dace (*Rhinichthys osculus* ssp.), a fish native to Oregon, from the Federal List of Endangered and Threatened Wildlife on the basis of recovery. This determination is based on a review of the best available scientific and commercial information, which indicates that the threats to the Fosskett speckled dace have been eliminated or reduced to the point where it no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We are seeking information and comments from the public regarding this proposed rule and the draft post-delisting monitoring plan for the Fosskett speckled dace.

DATES: We will accept comments received or postmarked on or before March 5, 2018. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern time on this date. We must receive requests for public

hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 20, 2018.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R1-ES-2017-0051, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: Docket No. FWS-R1-ES-2017-0051, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: This proposed rule and a copy of the draft post-delisting monitoring (PDM) plan referenced throughout this document can be viewed at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2017-0051, or at the Oregon Fish and Wildlife Office's website at <https://www.fws.gov/oregonfwo>. In addition, the supporting file for this proposed rule will be available for public inspection by appointment, during normal business hours, at the Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97226; telephone 503-231-6179.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: 503-231-6179; facsimile (fax): 503-231-6195. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may be removed from the Federal List of Endangered and Threatened Wildlife (List) due to recovery. A species is an "endangered species" for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a "threatened species" if it is likely to

become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term "foreseeable future." The Fosskett speckled dace is listed as threatened, and we are proposing to delist the species (*i.e.*, remove the species from the List) because we have determined it is not likely to become an endangered species now or within the foreseeable future. Delistings can only be made by issuing a rulemaking.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any one or a combination of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Fosskett speckled dace is no longer at risk of extinction and has exceeded or met the following criteria for delisting described in the species' recovery plan:

(1) Long-term protection of habitat, including spring source aquifers, spring pools and outflow channels, and surrounding lands, is assured;

(2) Long-term habitat management guidelines are developed and implemented to ensure the continued persistence of important habitat features and include monitoring of current habitat and investigation for and evaluation of new spring habitats; and

(3) Research into life history, genetics, population trends, habitat use and preference, and other important parameters is conducted to assist in further developing and/or refining criteria (1) and (2), above.

As per recovery criterion (2), we consider the Fosskett speckled dace to be a conservation-reliant species¹ (see Scott *et al.* 2010, entire), given that it requires active management to maintain suitable habitat. To address this management need, the Bureau of Land Management (BLM), the Oregon Department of Fish and Wildlife (ODFW), and the Service developed and are implementing the Fosskett Speckled Dace (*Rhinichthys osculus* ssp.) Cooperative Management Plan (CMP; USFWS *et al.* 2015), and are committed

¹ We define conservation-reliant species in this case as those that have generally met recovery criteria but require continued active management to sustain the species and associated habitat in a recovered condition.

to the continuing long-term management of this species.

Information Requested

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental or State agencies, Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. The comments that will be most useful and likely to influence our decisions are those supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. We particularly seek comments concerning:

(1) Reasons why we should or should not remove Foscett speckled dace from the Federal List of Endangered and Threatened Wildlife (*i.e.*, “delist” the fish under the Act);

(2) New biological or other relevant data concerning any threat (or lack thereof) to this fish (*e.g.*, those associated with climate change);

(3) New information on any efforts by the State or other entities to protect or otherwise conserve the Foscett speckled dace or its habitat;

(4) New information concerning the range, distribution, and population size or trends of this fish;

(5) New information on the current or planned activities in the habitat or range of the Foscett speckled dace that may adversely affect or benefit the fish; and

(6) Information pertaining to the requirements for post-delisting monitoring of the Foscett speckled dace.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, may not meet the standard of information required by section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), which directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

Prior to issuing a final rule to implement this proposed action, we will take into consideration all comments

and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email, fax, or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked by, the date specified in **DATES**. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. Please note that comments posted to this website are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-deliver hardcopy comments that include personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule and draft post-delisting monitoring (PDM) plan, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see *Document availability* under **ADDRESSES**, above).

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposal, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** within 45 days after the date of this **Federal Register** publication (see **DATES**, above). We will schedule at least one public hearing on this proposal, if any are requested, and announce the dates, times, and location(s) of any hearings, as well as how to obtain reasonable

accommodations, in the **Federal Register** at least 15 days before the first hearing.

Peer Review

In accordance with our policy, “Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,” which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule as well as the draft PDM plan. The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. These reviews will be completed during the public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Background

Previous Federal Actions

We published a final rule listing the Foscett speckled dace as threatened in the **Federal Register** on March 28, 1985 (50 FR 12302). This rule also found that the designation of critical habitat was not prudent because it would increase the likelihood of vandalism to the small, isolated springs that support this species. On April 27, 1998, a recovery plan was completed for the Foscett speckled dace as well as two other fish of the Warner Basin and Alkali Subbasin (USFWS 1998).

On March 25, 2009 (USFWS 2009, entire), a 5-year review of the Foscett speckled dace status was completed, recommending no change in listing status. On February 18, 2014, we published a notice in the **Federal Register** announcing the initiation of 5-year status reviews and information requests for five species, including the Foscett speckled dace (79 FR 9263). No information was received from this request. The second 5-year review, completed on October 26, 2015 (USFWS 2015, entire), concluded that the status of the Foscett speckled dace had substantially improved since the time of listing according to the definitions of “endangered species” and “threatened species” under the Act and recommended that the Foscett speckled dace be considered for delisting.

Species Description

The Foscett speckled dace (*Rhinichthys osculus* ssp.) is in the family Cyprinidae (Girard 1857) and is

represented by two populations in Lake County, Oregon: A natural population that inhabits Foscett Spring on the west side of Coleman Lake, and an introduced population at Dace Springs (USFWS 1998, p. 14). The Foscett speckled dace is a small, elongate, rounded minnow (4 inches (in) (10 centimeters (cm)) with a flat belly. The snout is moderately pointed, the eyes and mouth are small, and ventral barbels (*i.e.*, whisker-like sensory organs near the mouth) are present. Foscett speckled dace have eight dorsal fin rays and seven anal fin rays, and the caudal fin is moderately forked (USFWS 1998, p. 8). The color of its back is dusky to dark olive; the sides are grayish green, with a dark lateral stripe, often obscured by dark speckles or blotches; and the fins are plain. Breeding males are reddish on the lips and fin bases.

Life History

Relatively little is known about the biology of the Foscett speckled dace. Fish breed at age 1 year, and spawning begins in March to April and extends into July; individual fish can live for at least 4 years (Scheerer *et al.* 2015, p. 2). Length-frequency histograms suggest the presence of multiple age classes and that successful reproduction occurs annually (Sheerer and Jacobs 2009, p. 5). Young-of-the-year fish are more common in the shallow marsh habitats (Scheerer *et al.* 2016, p. 3). Presumably, similar to other dace, Foscett speckled dace require rock or gravel substrate for egg deposition (Sigler and Sigler 1987, p. 208). The taxonomy of the Foscett speckled dace is summarized in the species' 5-year review (USFWS 2015).

Distribution

The Foscett speckled dace is endemic to Foscett Spring in the Warner Basin,

in southeastern Oregon (see Figure 1). The historical known natural range of the Foscett speckled dace is limited to Foscett Spring. At the time of listing in 1985, Foscett speckled dace also occurred at nearby Dace Spring where translocation was initiated in 1979 (Williams *et al.* 1990, p. 243).

Foscett speckled dace were probably distributed throughout prehistoric Coleman Lake (see Figure 1) during times that it held substantial amounts of water. The timing of the isolation between the Warner Lakes and the Coleman Lake Subbasin is uncertain although it might have been as recent as 10,000 years ago (Bills 1977, entire). As Coleman Lake dried, the salt content of the water increased and suitable habitat would have been reduced from a large lake to spring systems that provided adequate freshwater.

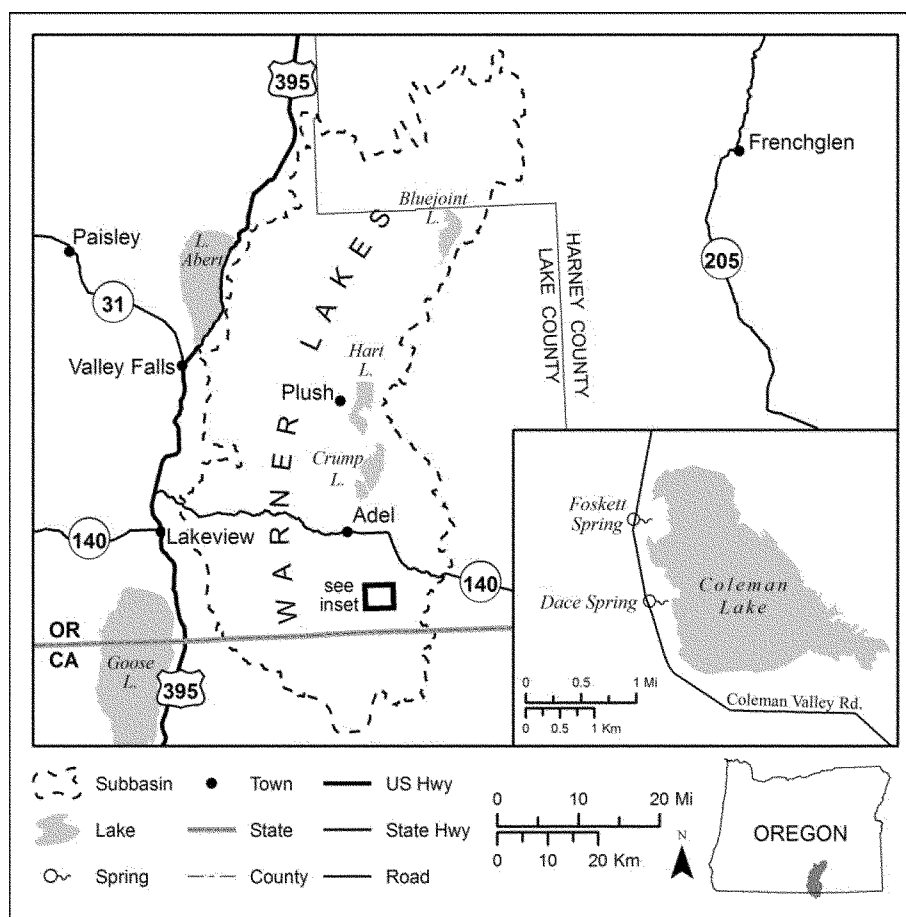


Figure 1. Location of Foscett Spring and Dace Spring.

Given that both Foscett and Dace springs were historically below the surface of Coleman Lake, it is reasonable

to assume that Foscett speckled dace occupied Dace Spring at some point in the past although none was documented

in the 1970s. Beginning in 1979, Foscett speckled dace were translocated into the then-fishless Dace Spring to attempt to

create a second population (see discussion below, under *Abundance*).

Habitat

Foskett Spring is a small, natural spring that rises from a springhead pool that flows through a narrow, shallow spring brook into a series of shallow marshes, and then disappears into the soil of the normally dry Coleman Lake (Scheerer *et al.* 2016, p. 1). Foskett Spring is a cool-water spring with temperatures recorded at a constant 64.8 degrees Fahrenheit (°F) (18.2 degrees Celsius (°C)) (Scheerer and Jacobs 2009, p. 5). The spring water is clear, and the water flow rate is less than 0.5 cubic feet (ft³) per second (0.01 cubic meters (m³) per second). The springhead pool has a loose sandy bottom and is heavily vegetated with aquatic plants. The ODFW estimated approximately 864 square yards (yds²) (722 square meters (m²)) of wetland habitat are associated with the Foskett Spring area, including the spring pool, spring brook, tule marsh, cattail marsh, and sedge marsh (Scheerer and Jacobs 2005, p. 6; hereafter “marsh” unless otherwise noted). Foskett speckled dace occur in all the wetlands habitats associated with the spring. The fish use overhanging bank edges, grass, exposed grass roots, and filamentous algae as cover. In 1987, the BLM acquired the property containing both Foskett and Dace springs and the surrounding 161 acres (ac) (65 hectares (ha)), of which approximately 69 ac (28 ha) were fenced to exclude cattle from the two springs. After fencing and cattle exclusion, encroachment by aquatic vegetation reduced the open-water habitat (Scheerer and Jacobs 2007, p. 9). This is a common pattern in desert spring ecosystems and has resulted in reductions of fish populations at other sites (see Kodric-Brown and Brown 2007).

In 2005, 2007, and 2009, the ODFW considered Foskett speckled dace habitat to be in good condition, but limited in extent (Scheerer and Jacobs 2005, p. 7; 2007, p. 9; and 2009, p. 5). They noted that encroachment by aquatic plants may be limiting the population and that a decline in abundance of Foskett speckled dace since 1997 was probably due to the reduction in open-water habitat. Deeper water with moderate vegetative cover would presumably be better habitat, judging from the habitats used by other populations of speckled dace, although Dambacher *et al.* (1997, no pagination)

noted that past habitat management to increase open-water habitat has been unsuccessful in the long run due to sediment infilling and regrowth of aquatic plants. To address the encroachment by aquatic vegetation, in 2013, the BLM implemented a controlled burn in the surrounding marshes to reduce vegetation biomass. In 2013 and 2014, the BLM hand-excavated 11 pools and increased the open-water habitat by 196 yds² (164 m²) (Scheerer *et al.* 2014, p. 9). The response of Foskett speckled dace to this habitat enhancement was substantial but relatively short-lived (see *Abundance*, below).

Dace Spring is approximately 0.5 mile (mi) (0.8 kilometer (km)) south of Foskett Spring and is smaller than Foskett Spring. Baseline water quality and vegetation monitoring at Foskett and Dace springs were initiated by the BLM in 1987. Data collected on September 28, 1988, documented that the springs had similar water chemistry, temperature, and turbidity (Williams *et al.* 1990, p. 244). To increase open-water habitat, the BLM and the Service worked together in 2009, to construct two ponds connected to the outlet channel of Dace Spring. In 2013, the BLM reconfigured the inlet and outlet to the two ponds, allowing greater water flow and improving water quality (Scheerer *et al.* 2013, p. 8).

Abundance

The population of Foskett speckled dace has been monitored regularly by the ODFW since 2005, and, while variable, the population appears to be resilient (*i.e.*, ability of a species to withstand natural variation in habitat conditions and weather as well as random events). General observations made during these population surveys included the presence of multiple age-classes and the presence of young-of-the-year, which indicates that breeding is occurring and young are surviving for multiple years. Bond (1974) visually estimated the population in Foskett Spring to be between 1,500 and 2,000 individuals in 1974. In 1997, the ODFW obtained mark-recapture population estimates at both Foskett and Dace springs (Dambacher *et al.* 1997, no pagination). The Foskett Spring estimate was 27,787 fish, and the majority of the fish (97 percent) occurred in an open-water pool located in the marsh outside of the existing Foskett Spring cattle enclosure. Since 1997, population estimates have varied from 751 to

24,888 individuals (Table 1). The data in Table 1 were obtained using the Lincoln-Petersen model (1997–2012), the Huggins closed-capture model (2011–2014), and a state-space model (2015–2016). Estimates were not calculated by habitat type using the Huggins model in 2011, because length-frequency data were not available for each habitat location (Scheerer *et al.* 2015, pp. 4–7; Scheerer *et al.* 2013, p. 5; Scheerer *et al.* 2014, p. 6; Scheerer *et al.* 2016, p. 6). Different models have been used to estimate abundance through time to provide the most accurate and robust estimates; for example, it was determined that the Lincoln-Petersen estimator had underestimated abundance (Peterson *et al.* 2015). Abundance declined substantially from 1997 through 2012, a period when aquatic plants substantially expanded into open-water habitats (Scheerer *et al.* 2016, p. 9). The higher population estimates from 2013 through 2015 were attributed to habitat management that increased open-water habitat (see below) and most fish occurred in maintained habitats (Scheerer *et al.* 2016, p. 9). The population decline documented in 2016 in Foskett Spring was likely a result of vegetation regrowth into the excavated areas (Scheerer *et al.* 2016, pp. 6–9). As a result of the vegetation regrowth and population decline in 2016, and consistent with the CMP, the BLM conducted an extensive habitat enhancement project in 2017, excavating approximately 300 cubic yards (yds³) (251 m³) of vegetation and accumulated sediment in the Foskett Spring pool, stream, and portions of the wetland, resulting in a significant increase in open-water habitat. Prior to initiating this enhancement project in 2017, the ODFW conducted a population survey that estimated 4,279 dace in Foskett Spring (95 percent CI: 3,878–4,782), a moderate increase in the estimate from the prior year (1,830) (P. Scheerer, ODFW, pers. comm. 2017). As noted previously, and as illustrated in Table 1 below, the variability in abundance is not uncommon for this species and appears in part to be driven by the availability of open-water habitat. Given information gained from prior habitat enhancement actions at Foskett and Dace springs, we anticipate the extensive habitat enhancement work conducted by the BLM in 2017 will support an increase in abundance in coming years.

TABLE 1—FOSKETT SPRING: POPULATION ESTIMATES WITH 95 PERCENT CONFIDENCE INTERVALS OF FOSKETT SPECKLED DACE BY HABITAT TYPE

Model	Yr ¹	Habitat Type or Location					Management
		Spring Pool	Spring brook	Tule marsh	Cattail marsh	Entire site ²	
Lincoln-Petersen.	1997	204 (90–317)	702 (1,157–2,281).	no sample	26,881 (13,158–40,605).	27,787 (14,057–41,516).	none.
	2005	1,627 (1,157–2,284).	755 (514–1,102).	425 (283–636)	353 (156–695)	3,147 (2,535–3,905).	none.
	2007	1,418 (1,003–1,997).	719 (486–1,057).	273 (146–488)	422 (275–641)	2,984 (2,403–3,702).	none.
	2009	247 (122–463)	1,111 (774–1,587).	1,062 (649–1,707).	158 (57–310)	2,830 (2,202–3,633).	none.
	2011	322 (260–399)	262 (148–449)	301 (142–579)	0	751 (616–915)	none.
	2012	404 (354–472)	409 (357–481)	220 (159–357)	0	988 (898–1,098).	Controlled burn.
Huggins	2011	NA ³	NA	NA	NA	1,728 (1,269–2,475).	none.
	2012	633 (509–912)	589 (498–1,024).	625 (442–933)	0	1,848 (1,489–2,503).	Controlled burn.
	2013	2,579 (1,985–3,340).	638 (566–747)	6,891 (5,845–8,302).	3,033 (2,500–3,777).	13,142 (1,157–2,284).	Pool excavation and hand excavation of spring brook and marshes.
	2014	2,843 (2,010–3,243).	7,571 (2,422–13,892).	11,595 (7,891–12,682).	2,936 (1,757–7,002).	24,888 (19,250–35,510).	Pool excavation and hand excavation of spring brook and marshes.
State-space	2015	698 (520–2,284).	11,941 (5,465–15,632).	3,662 (2,158–6,565).	38 (8–111)	16,340 (10,980–21,577).	none.
	2016	138 (122–226)	656 (609–1240).	1,021 (926–1245).	14 (12–19)	1,830 (1,694–2,144).	none.
	2017	925	1,032	2,322	NA ⁴	4,279 (3,878–4,782).	Mechanical excavation to deepen the open water pools and channels.

¹ Note that there are two population estimates (*i.e.* Lincoln-Petersen and Huggins) for 2011 and 2012.

² Site estimate totals were calculated from the total number of marked and recaptured fish and are not the sum of the estimates for the habitat types.

³ No estimates were calculated; see (Scheerer *et al.* 2015, pp. 4–7).

⁴ The cattail marsh habitat was too shallow to survey in 2017.

No Fosskett speckled dace were documented in Dace Spring in the 1970s. In 1979 and 1980, individuals were translocated from Fosskett Spring to Dace Spring (Williams *et al.* 1990, p. 243; see Table 2). Although an estimated 300 fish were documented in 1986 (Williams *et al.* 1990, p. 243), this initial effort failed to establish a population at Dace Spring due to a lack of successful recruitment (Dambacher *et al.* 1997, no pagination). Only 19 fish were observed in 1997, and subsequent surveys failed to locate individuals in Dace Springs (Scheerer and Jacobs 2005, p. 2). In

2009, two pools were created at Dace Spring to increase open-water habitat and additional individuals were moved to the spring. Although recruitment was documented, major algal blooms and periods of low dissolved oxygen resulted in low survival (Scheerer *et al.* 2012, p. 8). Habitat manipulation by the BLM in 2013 improved water quality, and recruitment was documented in 2014 and 2015 (Scheerer *et al.* 2014, p. 6; Scheerer *et al.* 2015, p. 5). The two constructed pools at Dace Spring are currently providing additional habitat and may continue to serve as a refuge

population for Fosskett speckled dace. Based on 2017 population estimates, Dace Spring numbers have increased dramatically since 2013 (Table 2). The population estimates in Table 2 were made with 95 percent confidence intervals, translocations, and habitat management (Williams *et al.* 1990, p. 243; Dambacher *et al.* 1997, no pagination; Scheerer and Jacobs 2005, p. 2; Scheerer *et al.* 2012, p. 1; Scheerer *et al.* 2013, pp. 2, 8; Scheerer *et al.* 2014, pp. 6, 9; Scheerer *et al.* 2015, p. 5; Scheerer *et al.* 2016, p. 6; Scheerer *et al.* 2017, p. 6).

TABLE 2—DACE SPRING: SUMMARY OF FOSKETT SPECKLED DACE POPULATION ESTIMATES

Year	Population estimate	Number translocated	Habitat management
Pre-1979	0	none	none.
1979	no estimate	50	none.
1980	no estimate	50	none.
1986	300 ¹	none	none.
1997	<20 ¹	none	none.
2005	0	none	none.
2009	no estimate	none	construction of 2 pools.
2010	no estimate	49	none.
2011	34 (11–36)	75	none.

TABLE 2—DACE SPRING: SUMMARY OF FOSKETT SPECKLED DACE POPULATION ESTIMATES—Continued

Year	Population estimate	Number translocated	Habitat management
2012	13 ²	none	none.
2013	34 (17–62)	200	construction of flow through channels.
2014	552 (527–694)	324	none.
2015	876 (692–1,637)	none	none.
2016	1,964 (1,333–4,256)	none	none.
2017	15,729 (12,259–58,479)	none	none.

¹ No confidence interval calculated.

² In 2012, there were a known total of 13 individuals.

Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List. However, revisions to the List (*i.e.*, adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made “solely on the basis of the best scientific and commercial data available.” Therefore, recovery criteria should help indicate when we would anticipate an analysis of the five threat factors under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species after evaluating the five statutory factors (see Summary of Factors Affecting the Species, below).

While recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or remove it from the List is ultimately based on analysis of the best scientific and commercial data available to determine whether a species is no longer considered endangered or threatened, regardless of whether that

information differs from the recovery plan.

Recovery plans may be revised to address continuing or new threats to the species as new substantive information becomes available. The recovery plan identifies site-specific management actions that will help recover the species, measurable criteria that set a trigger for eventual review of the species’ listing status (*e.g.*, under a 5-year review conducted by the Service), and methods for monitoring recovery progress. Recovery plans are intended to establish goals for long-term conservation of listed species and define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be met. In that instance, we may determine that the threats are minimized sufficiently to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The Oregon Desert Fishes Working Group has been proactive in improving the conservation status of the Fosskett speckled dace. This group of Federal and State agency biologists, academicians, and others has met annually since 2007 to: (1) Share species’ status information; (2) share results of new research; and (3) assess ongoing threats to the species.

The primary conservation objective in the Fosskett speckled dace recovery plan is to enhance its long-term persistence through the conservation and enhancement of its limited range and habitat (USFWS 1998, entire). The recovery plan states that the Fosskett speckled dace spring habitat is currently stable, but extremely restricted, and any alterations to the spring or surrounding activities that indirectly modify the spring could lead to the extinction of this species. While the recovery plan does not explicitly tie the recovery criteria to the five listing factors in section 4(a)(1) of the Act, our analysis of whether the species has achieved recovery is based on these five factors, which are discussed in the Summary of Factors Affecting the Species section, below. The recovery plan outlines three recovery criteria to assist in determining when the Fosskett speckled dace has recovered to the point that the protections afforded by the Act are no longer needed, which are summarized below. A detailed review of the recovery criteria for the Fosskett speckled dace is presented in the species’ 5-year review (USFWS 2015), which is available online at https://ecos.fws.gov/docs/five_year_review/doc4758.pdf, at <http://www.regulations.gov> under Docket No. FWS–R1–ES–2017–0051, or by requesting a copy from our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). The 2015 5-year review concluded that the risk of extinction has been substantially reduced, as threats have been managed, and recommended that the species be proposed for delisting (USFWS 2015, p. 29). The Fosskett speckled dace has exceeded or met the following criteria for delisting described in the recovery plan:

Recovery Criterion 1: Long-term protection to habitat, including spring source aquifers, spring pools and outflow channels, and surrounding lands, is assured.

Criterion 1 has been met. In 1987, the BLM acquired and now manages the 160-ac (65-ha) parcel of land containing both Fosskett and Dace springs (see

below) and fenced 70 ac (28 ha) to exclude cattle from both springs, although the fence does not include the entire occupied habitat for Fosskett speckled dace. The acquisition of this parcel of land by the BLM was specifically to provide conservation benefit to the Fosskett speckled dace. We anticipate continued ownership of this habitat by the BLM in the future in part due to direction in the BLM's Lakeview District Resource Management Plan (RMP), which includes a management goal of retaining public land with high public resource values and managing that land for the purpose for which it was acquired (BLM 2003, p. 92). Additional support for continued ownership and management of the site by the BLM rests in the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*), as amended, which directs the BLM to manage public land to provide habitat for fish and aquatic wildlife and to protect the quality of water resources. Lastly, continued ownership and management by the BLM, and the protections afforded to Fosskett and Dace springs from public ownership, is supported by the BLM's involvement as a cooperating agency in the development and implementation of the CMP finalized in August 2015 (USFWS *et al.* 2015).

While little information is available regarding spring flows or the status of the aquifer, the aquifer has limited capability to produce water for domestic or stock use (Gonthier 1985, p. 7). Given this, few wells exist in the Warner Valley and thus are not likely to impact Fosskett or Dace springs. Recovery Criterion 1 addresses listing factor A (present or threatened destruction, modification, or curtailment of its habitat or range).

Recovery Criterion 2: Long-term habitat management guidelines are developed and implemented to ensure the continued persistence of important habitat features and include monitoring of current habitat and investigation for and evaluation of new spring habitats.

Criterion 2 has been met. With the understanding that the Fosskett speckled dace is a conservation-reliant species, the BLM, ODFW, and Service developed a CMP (USFWS *et al.* 2015) that outlines long-term management actions necessary to provide for the continued persistence of habitats important to Fosskett speckled dace. The CMP was agreed to, finalized, and signed by the Service, BLM, and ODFW in August 2015. The cooperating parties committed to the following actions: (1) Protect and manage Fosskett speckled dace habitat; (2) enhance the habitat

when needed; (3) monitor Fosskett speckled dace populations and habitat; and (4) implement an emergency contingency plan as needed to address potential threats from the introduction of nonnative species, pollutants, or other unforeseen threats (USFWS *et al.* 2015, p. 3).

Although the CMP is a voluntary agreement among the three cooperating agencies, it is reasonable to conclude the plan will be implemented into the foreseeable future for multiple reasons. First, each of the cooperating agencies have established a long record of engagement in conservation actions for Fosskett speckled dace, including the BLM's prior contributions through land acquisition and three decades of habitat management at Fosskett and Dace springs; scientific research and monitoring by the ODFW dating back to 1997; and funding support, coordination of recovery actions, and legal obligations by the Service to monitor the species into the future under the Fosskett speckled dace post-delisting monitoring plan. In addition, all three cooperating agencies are active participants in the Oregon Desert Fishes Working Group, an interagency group facilitated by the Service that meets annually to discuss recent monitoring and survey information for multiple fish species, including Fosskett speckled dace, as well as to coordinate future monitoring and management activities.

Second, implementation of the CMP is already underway. The BLM has conducted quarterly site visits to determine the general health of the local spring environment using photo point monitoring techniques. In 2017, the BLM conducted an extensive habitat enhancement project by excavating approximately 300 yards (yds²) (251 m²) of vegetation and accumulated sediment in the Fosskett Spring pool, stream, and portions of the wetland, resulting in a significant increase in open-water habitat. The BLM also provided funding to the ODFW to conduct population estimates of Fosskett speckled dace. The ODFW provided personnel and technical assistance to the BLM for the above-mentioned excavation work in 2017, and they conducted an abundance estimate in 2017 to keep track of the long-term trend of the population. The Service provided personnel and technical assistance to the BLM for the 2017 excavation work and provided funding to the ODFW in 2015, 2016, and 2017 to conduct population estimates in Fosskett and Dace springs.

Third, the conservation mission and authorities of these agencies authorize this work even if the species is delisted. For example, the Lakeview District

BLM's Resource Management Plan (RMP) and BLM Manual 6840.06E both provide general management direction for Special Status Species, including the Fosskett speckled dace. The FLPMA also directs the BLM to manage public land to provide habitat for fish and aquatic wildlife and to protect the quality of water resources. The ODFW's State of Oregon Wildlife Diversity Plan (Oregon Administrative Rule (OAR) 635-100-0080), Oregon Native Fish Conservation Policy (OAR 636-007-0502), and the Oregon Conservation Strategy (ODFW 2016) each provide protective measures for the conservation of native fish including Fosskett speckled dace, which will remain on the ODFW's sensitive species list even we remove it from the Federal List. The Service is authorized to assist in the protection of fish and wildlife and their habitats under authorities provided by the Act (16 U.S.C. 1536), the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j, not including 742d-l).

Fourth, there is a practical reason to anticipate implementation of the CMP into the foreseeable future: The CMP actions are technically not complicated to implement, and costs are relatively low. We also have confidence that the actions called for in the CMP will be effective in the future because they have already proven effective as evidenced by the information collected from recent habitat actions and associated monitoring (Scheerer *et al.* 2016, entire).

Lastly, if the CMP is not adhered to by the cooperating agencies or an evaluation by the Service suggests the habitat and population numbers are declining, the Service would evaluate the need to again add the species to the List (*i.e.*, "relist" the species) under the Act. Taken together, it is therefore reasonable to conclude that the CMP will be implemented as anticipated and that the long-term recovery of Fosskett speckled dace will be maintained and monitored adequately.

Criterion 2 has been further met by the establishment of a refuge population of Fosskett speckled dace at nearby Dace Spring. As described earlier in this proposed rule, dating back to 1979, multiple unsuccessful attempts were made to create a refuge population of Fosskett speckled dace at Dace Spring. More recent actions have been more successful. Habitat modification at Dace Spring by the BLM, first in 2009 and again in 2013, and translocation of dace from Fosskett Spring to Dace Spring by the ODFW in 2010, 2011, 2013, and 2014, have resulted in a population estimated in 2017 to be 15,729 fish

(Table 2, above). Natural recruitment was documented in 2014, 2015, and 2016 (Scheerer *et al.* 2016, p. 6).

While our proposal to delist Foscett speckled dace is not dependent on the existence of a second population, the redundancy of a second population of Foscett speckled dace, should it prove viable over the long term, provides increased resiliency to the species' overall status and may reduce vulnerability to stochastic events and any future threats that may appear on the landscape.

Recovery Criterion 3: Research into life history, genetics, population trends, habitat use and preference, and other important parameters is conducted to assist in further developing and/or refining criteria 1 and 2 above.

This criterion has been met through population surveys by the ODFW and the Service, and investigations into the genetic relatedness of Foscett speckled dace in comparison with other nearby dace populations. In 1997, the Service contracted the ODFW to conduct an abundance survey and develop a population estimate for the Foscett speckled dace. In 2005, 2007, 2009, and 2011 through 2017, the Service again contracted the ODFW to obtain mark-recapture population estimates for both Foscett and Dace springs. At the former, habitat-specific population estimates were developed. Captured fish were measured to develop length-frequency histograms to document reproduction. In addition to collecting abundance data, ODFW staff mapped wetland habitats, monitored vegetation, and measured temperature and water quality at both springs during each survey. Together, the population estimates and habitat mapping confirmed the relationship between open-water habitat and fish abundance (Scheerer *et al.* 2016, p. 8). Water quality monitoring highlighted the need for habitat enhancement at Dace Springs. Thus, these data assisted in further developing and/or refining recovery criteria 1 and 2.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination of the five factors

described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of endangered or threatened. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following delisting or downlisting (*i.e.*, reclassification from endangered to threatened) and the removal or reduction of the Act's protections.

A species is "endangered" for purposes of the Act if it is in danger of extinction throughout all or a "significant portion of its range" and is "threatened" if it is likely to become endangered within the foreseeable future throughout all or a "significant portion of its range." The word "range" in the significant portion of its range phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the currently listed species, the Foscett speckled dace, should be considered endangered or threatened throughout all of its range. Then we will consider whether there are any significant portions of the Foscett speckled dace's range where the species is in danger of extinction or likely to become so within the foreseeable future.

The Act does not define the term "foreseeable future." For the purpose of this proposed rule, we defined the "foreseeable future" to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that we reasonably believe that reliable predictions can be

made concerning the future as it relates to the status of the Foscett speckled dace.

Based on population monitoring that began in 1997 by the ODFW, it has been established that the Foscett speckled dace population is variable, and the variability is directly linked to the amount of open-water habitat (Scheerer *et al.* 2016, p. 8). There is no evidence to indicate that this relationship will change in the future. There also is no reason to expect local changes to ground water levels (see Factor A discussion, below), and climate changes modeled over the next 30 plus years (*i.e.*, through 2049) are not predicted to impact the Foscett speckled dace (see Factor E discussion, below).

Based on 30 years of the BLM owning and managing habitat at Foscett and Dace springs, 20 years of population monitoring by the ODFW, modeling of climate change impacts that suggest little change in environmental conditions over the next 30 years in the Warner Lakes Basin, and agency commitments in the CMP to manage habitat and monitor population status of the Foscett speckled dace by the three agency cooperators, we determine it is reasonable to define the foreseeable future for the Foscett speckled dace as 30 years. In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.*, it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Service listed the Foscett speckled dace as threatened in 1985 (50 FR 12302; March 28, 1985), due to the species' very restricted range, its low

abundance, and extremely restricted and vulnerable habitat which was being modified. Adverse factors that were identified in the final listing rule included groundwater pumping for irrigation, excessive trampling of the habitat by livestock, channeling of the springs for agricultural purposes, other mechanical modifications of the aquatic ecosystem, and livestock water uses. The vulnerability of the habitat was accentuated by its very small size and a water flow rate of less than 0.5 cubic feet (ft³) per second (0.01 cubic meters (m³) per second) (50 FR 12304).

Livestock Use and Mechanical Modification

Trampling of the wetland habitat was evident at the time of listing. Grazing cattle affects the form and function of stream and pool habitat by hoof shearing, compaction of soils, and mechanical alteration of the habitat. Since the listing, the BLM acquired the property containing Foscett and Dace springs by land exchange in 1987, and fenced 70 ac (28 ha) of the 160-ac (65-ha) parcel to exclude cattle from both Foscett and Dace springs as well as the two recently constructed ponds. While the exclusion of cattle likely improved water quality and habitat stability, it may have played a role in increasing the extent of encroaching aquatic vegetation.

Although most of the habitat was excluded from grazing, a portion of the occupied habitat was not included in the fenced area. Examining the population trends within this unfenced habitat illustrates the variability of the population and the ability of the population to respond to management. In 1997, 97 percent of the estimated population of Foscett speckled dace was located in a shallow open-water pool in the cattail marsh (hereafter marsh) outside of the Foscett Spring enclosure fence. This marsh was dry in 1989 (Dambacher *et al.* 1997, no pagination), illustrating the variability in habitat conditions of this wetland system.

In 2007, 14 percent of the estimated population of 2,984 Foscett speckled dace was located in the marsh outside of the exclusion fence (Scheerer and Jacobs 2007, p. 7), and trampling of the wetland habitat by cattle was evident (USFWS 2015, p. 19).

In 2011 and 2012, no Foscett speckled dace were detected in the marsh outside of the exclusion fence (Scheerer *et al.* 2014, p. 6). In response, the BLM conducted a controlled burn in 2013; and in 2013 and 2014, they excavated open-water habitat in the marsh. In 2013, over 13,000 Foscett speckled dace were detected, with nearly 10,000 being

in the restored marsh (Scheerer *et al.* 2013, p. 9). In 2014, nearly 25,000 Foscett speckled dace were detected, with nearly 19,000 being in the restored marsh (Scheerer *et al.* 2014, p. 9). Unfortunately, the marsh and excavated pools outside the fence quickly grew dense with vegetation, and the excavated pool filled in with sediment; it is unclear if the pasture was rested during this period. Nonetheless, the positive relationship between dace abundance and open water (Scheerer *et al.* 2016, p. 8) illustrates the need for periodic vegetation removal to maintain appropriate habitat for the Foscett speckled dace (Scheerer *et al.* 2014, p. 9).

Sometime in fall and/or winter of 2014 to 2015, unauthorized cattle grazing occurred in both the Foscett and Dace spring enclosures (Leal 2015, pers. comm.). Cattle accessed the site after a gate was removed illegally. Based on photos provided by the BLM, it appears the vegetation utilization was sporadic although heavy in some areas, but damage to Foscett and Dace springs' streambanks appeared inconsequential. The BLM has replaced the gate and will continue to maintain the fence per their commitments outlined in the CMP (USFWS *et al.* 2015). Although cattle did access the Foscett and Dace spring sites, over time these enclosures have sufficiently protected Foscett and Dace springs from damage from livestock grazing. The quarterly site visits committed to by the BLM in the CMP will increase the ability to detect and remedy any future issues with open gates or downed fences. However, due to the remoteness of the site it is possible unauthorized grazing within the enclosures may infrequently occur in the foreseeable future. Given the results of previous monitoring of grazing within the enclosures we do not view grazing in the enclosure as a threat in the foreseeable future.

Field surveys conducted from 2005 through 2015 at Foscett Spring did not reveal any sign of artificial channeling of water or mechanized impacts beyond the remnants of historical activities (*i.e.*, two small rock cribs and side-casting of material around the spring). The habitat at Foscett Spring is extremely limited, and past encroachment by aquatic vegetation has reduced the area of open water. The decline in abundance of Foscett speckled dace from 1997 to 2011 (see Table 1, above) was likely due to the reduction in open-water habitat (Scheerer and Jacobs 2005, pp. 5, 7; Scheerer *et al.* 2012, p. 8). Management to increase open-water habitat, while very effective in the short term, needs to be periodically repeated as sediment

infilling and subsequent growth of aquatic vegetation is continuous. As such, periodic management will be needed in perpetuity to maintain high-quality habitat for the Foscett speckled dace.

The ODFW recommended that restoration efforts to increase open-water habitat are needed to increase carrying capacity for Foscett speckled dace (Scheerer and Jacobs 2007, p. 9; Scheerer and Jacobs 2009, pp. 5–6). Restoration efforts were conducted at Foscett Spring in 2013 and 2014, and resulted in a 164 percent increase in open-water habitat and a peak population estimate in 2014 of 24,888 individuals (Scheerer *et al.* 2016, pp. 8–9). Periodic habitat maintenance at Foscett and Dace springs will be necessary to maintain open-water habitat for the Foscett speckled dace. The BLM, ODFW, and Service have committed to periodic habitat maintenance in the CMP signed in August 2015. As noted earlier in this proposed rule, the CMP identifies actions such as protection of the aquatic habitat and surrounding land; management of the habitat to ensure continued persistence of important habitat features; monitoring of the fish populations and habitat; and implementation of an emergency contingency plan in case of nonnative introduction, pollutants, or other unforeseen threats. Implementation of these actions will significantly reduce or eliminate threats related to destruction, modification or curtailment of the Foscett speckled dace's habitat or range. It is reasonable to conclude the CMP will be implemented into the foreseeable future for the reasons summarized in the *Recovery Planning and Recovery Criteria* discussion, above.

Mechanical modification and livestock watering uses are no longer considered a threat since the BLM acquired the property containing both Foscett and Dace springs and constructed a fence to exclude cattle from a majority of the habitat. We anticipate continued monitoring and maintenance of the exclusion fence into the foreseeable future by the BLM based on their commitments in the CMP and their long record of conservation management of habitat at Foscett and Dace springs.

Pumping of Groundwater and Lowering of the Water Table

Streams and lakes in and around the Warner Basin have produced a variety of unconsolidated Pliocene to Holocene sediments that have accumulated and contribute to the structure of the aquifer (Gonthier 1985, p. 17). Wells in other

portions of the Warner Basin utilizing these Pleistocene lake bed aquifers tend to have low to moderate yields. Pleistocene lake bed deposits of clay, sand, and diatomaceous earth (*i.e.*, soft, crumbly soil formed from the fossil remains of algae) have a thickness of up to 200 ft (60 m) (Gonthier 1985, pp. 38–39; Woody 2007, p. 64). Hydraulic conductivity (*i.e.*, ease with which a fluid can move) in these sediments ranges from 25 to 150 ft per day (7.6 to 46 m per day); while transmissivity (horizontal groundwater flow) in valleys in this sediment-filled basin and range region of Oregon, such as the Warner Valley aquifer system, ranges from 1,000 to 15,000 square feet (ft²) (92.90 to 1,393.55 square meters (m²)) per day (Gonthier 1985, p. 7). This is considered a poor quality aquifer with limited capability to produce water for domestic or stock use (Gonthier 1985, p. 7). Therefore, few wells exist in the Warner Valley and are not likely to impact Fosskett or Dace spring.

We have no evidence of groundwater pumping in the area. A query of the Oregon Water Resources Department database for water rights did not reveal any wells within 5 mi (8 km) of Fosskett Spring. The closest well listed in the database is 5.9 mi (9.5 km) away along Twentymile Creek. No other wells were located closer to Fosskett Spring.

There are no Oregon Water Resources Department records of water rights in the vicinity of either spring. Any development of water resources and filing of water rights on BLM lands would require a permit (BLM 2003), and we anticipate the likelihood of the BLM receiving a permit request related to a new water right in the future would be low. Although groundwater pumping was identified as a potential threat at the time of listing, we have determined this is not currently a threat and is not anticipated to be a threat in the foreseeable future.

Habitat Enhancement and Creation of a Refuge Population

To assess the effects of management on reducing the encroachment of aquatic vegetation at Fosskett Spring and the response of fish to increased open water, the BLM conducted a controlled burn in 2013 in the tule and cattail marsh to reduce plant biomass (Scheerer *et al.* 2014, p. 9). In 2013 and 2014, the BLM excavated pools to increase open-water habitat. The response of dace to these restoration efforts was remarkable with the 2014 population estimate being 24,888 (19,250–31,500; 95 percent confidence interval) fish, and most of these fish occupied the restored marsh areas. The population data indicate that

fluctuations in abundance and population trends are tied to the availability of open water (Scheerer *et al.* 2016, p. 8) and illustrate the need for periodic management to maintain open-water habitat.

Habitat restoration at Dace Spring followed by translocations of dace has resulted in a second subpopulation of Fosskett speckled dace. Two ponds were created and connected to the outlet channel of Dace Spring, and Fosskett speckled dace were translocated to the ponds. The 2016 population estimate was 1,964 fish, which is a substantial increase from the 2013 estimate of 34 fish. The estimate includes the 200 dace that were transplanted from Fosskett Spring in 2013 (Scheerer *et al.* 2014, p. 6). The 2017 population estimate in Dace Spring was 15,729 (CI: 12,259–58,479) (Scheerer *et al.* 2017, p. 6). Although the broad confidence limits infer low precision, even the low-end of the confidence limit (12,259) represents a significant increase over the 2016 estimate of 1,964 individuals. Reproduction at Dace Spring was documented by the ODFW in 2014 (Scheerer *et al.* 2014, p. 6) and in 2015 (Scheerer *et al.* 2015, p. 5). The ODFW is evaluating the long-term status of the Dace Spring population. Although results are positive, it is premature to conclude if establishment of this refuge population will be successful over the long term. While our proposal to delist Fosskett speckled dace is not dependent on establishment of a refuge population, the redundancy of a second population of Fosskett speckled dace at Dace Spring, should it prove viable over the long term, provides increased resiliency to the species' overall status and may reduce vulnerability to stochastic events and any future threats that may appear on the landscape.

Summary of Factor A

Securing long-term habitat protections (Recovery Criterion 1) and developing and implementing long-term management techniques (Recovery Criterion 2) are important recovery criteria for this species, and many of the factors discussed above fulfill these criteria, which also were identified in the most recent 5-year review (USFWS 2015, entire). Acquisition of the property by the BLM has facilitated the recovery of Fosskett speckled dace. The recent habitat enhancement work and the commitments made in the CMP provide assurance that with minor oversight and continued habitat enhancement by the BLM and ODFW, the species is not likely to become an endangered species in the foreseeable future. Although the CMP is voluntary,

it is reasonable to conclude, for reasons summarized in the *Recovery Planning and Recovery Criteria* discussion above, that the plan will be implemented by all three cooperating agencies for the foreseeable future.

Based on the best available information and confidence that current management will continue into the future as outlined in the CMP, we conclude that the present or threatened destruction, modification, or curtailment of habitat or range does not constitute a substantial threat to the Fosskett speckled dace, now or in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes was not a factor in listing and, based on the best available information, we conclude that it does not constitute a substantial threat to the Fosskett speckled dace now or in the foreseeable future.

Factor C. Disease or Predation

The original listing in 1985 states, “There are no known threats to . . . Fosskett speckled dace from disease or predation” (50 FR 12304; March 28, 1985). During the 2005 and 2011 population surveys, the ODFW biologist noted that: “[t]he fish appear to be in good condition with no obvious external parasites” (Scheerer and Jacobs 2005, p. 7; Scheerer 2011, p. 6). During the 2007 and 2009 population surveys, the ODFW noted that the Fosskett speckled dace appeared healthy and near carrying capacity for the available habitat at that time (Scheerer and Jacobs 2007, p. 8; 2009, p. 5). We have no additional information that would change this conclusion.

The CMP includes quarterly field visits to Fosskett and Dace springs to determine general health of the local spring environment and to identify threats that necessitate implementation of the emergency contingency plan, which could include the detection of disease and introduced predators. The emergency contingency plan describes steps to be taken to secure Fosskett speckled dace in the event their persistence is under immediate threat (*e.g.*, from introduction of nonnative fish that may threaten them due to predation or act as a disease vector).

Summary of Factor C

Based on the best available information, we conclude that disease and predation do not constitute substantial threats to the Fosskett

speckled dace now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the Fosskett speckled dace discussed under other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account “those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.” In relation to Factor D under the Act, we interpret this language to require us to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in the threats analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations; an example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

For currently listed species that are being considered for delisting, we consider the adequacy of existing regulatory mechanisms to address threats to the species absent the protections of the Act. We examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms will continue to help ensure that future threats will be reduced or minimized.

The 1985 listing rule states, “The State of Oregon lists . . . Fosskett speckled dace as [a] “fully protected subspecies” under the Oregon Department of Fish and Wildlife regulations. These regulations prohibit taking of the fishes without an Oregon scientific collecting permit. However, no protection of the habitat is included in such a designation and no management or recovery plan exists [for the Fosskett speckled dace]” (50 FR 12304; March 28, 1985).

The Fosskett speckled dace was listed as threatened by the State of Oregon in 1987, as part of the original enactment of the Oregon Endangered Species Act (Oregon ESA). The listing designated Fosskett speckled dace as a “protected species” and prohibited take or possession unless authorized by a permit. The Oregon ESA prohibits the “take” (kill or obtain possession or control) of State-listed species without an incidental take permit. The Oregon ESA applies to actions of State agencies

on State-owned or -leased land, and does not impose any additional restrictions on the use of Federal land. In recognition of the successful conservation actions and future management commitments for the Fosskett speckled dace and its habitat, the Oregon Fish and Wildlife Commission (OFWC) ruled to remove Fosskett speckled dace from the State List of Threatened and Endangered Species on April 21, 2017.

The ODFW’s Native Fish Conservation Policy calls for the conservation and recovery of all native fish in Oregon (ODFW 2002), including Fosskett speckled dace, now listed as sensitive on the ODFW’s sensitive species list. The Native Fish Conservation Policy requires that the ODFW prevent the serious depletion of any native fish species by protecting natural ecological communities, conserving genetic resources, managing consumptive and non-consumptive fisheries, and using hatcheries responsibly so that naturally produced native fish are sustainable (OAR 635–007–0503). The policy is implemented through the development of collaborative conservation plans for individual species management units that are adopted by the OFWC. To date, the ODFW has implemented this policy by following the federally adopted recovery plan and will continue to conserve Fosskett speckled dace according to the State rules for conserving native fish and more specifically the commitments made by the ODFW in the CMP. The State of Oregon Wildlife Diversity Plan (OAR 635–100–0080), Oregon Native Fish Conservation Policy (OAR 636–007–0502), and the Oregon Conservation Strategy (ODFW 2016) provide additional authorities and protective measures for the conservation of native fish, including the Fosskett speckled dace.

Additionally, the CMP, prepared jointly and signed by the ODFW, BLM, and Service, will guide future management and protection of the Fosskett speckled dace, regardless of its State or Federal listing status. The CMP, as explained in more detail in the *Recovery Planning and Recovery Criteria* discussion above, identifies actions to be implemented by the Service, BLM, and ODFW to provide for the long-term conservation of the Fosskett speckled dace (Recovery Criterion 2).

The approach of developing an interagency CMP for the Fosskett speckled dace to promote continued management post-delisting is consistent with a “conservation reliant species,”

described by Scott *et al.* (2005, pp. 384–385) as those that have generally met recovery criteria but require continued active management to sustain the species and associated habitat in a recovered condition. A key component of the CMP is continued management of aquatic vegetation, as necessary, to promote open-water habitat important to the species’ long-term viability.

Finally, the BLM manages the 160-ac (65-ha) parcel of land containing the Fosskett and Dace spring sites consistent with the Lakeview District’s RMP (BLM 2003), which provides general management guidelines for Special Status Species, and specifically states that the BLM will manage the Fosskett speckled dace and its habitat consistent with the species’ 1998 recovery plan.

Summary of Factor D

In our discussion under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Regulatory mechanisms may reduce or eliminate the impacts from one or more identified threats. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address the specific threats to the species. The existence of regulatory mechanisms like the Lakeview District BLM’s RMP, State conservation measures such as the Oregon Native Fish Conservation Strategy, along with the other authorities supporting each cooperating agency’s entrance into the CMP agreement, reduce risk to the Fosskett speckled dace and its habitat. As previously discussed, conservation measures initiated by the State of Oregon and the BLM under the CMP manage potential threats caused by activities such as illegal livestock grazing and trampling. For the reasons discussed above, we anticipate that the conservation measures initiated under the CMP will continue through at least the foreseeable future, which we have defined as 30 years. Consequently, we find that conservation measures, along with existing State and Federal regulatory mechanisms, are adequate to address these specific threats absent protections under the Act.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

The original listing rule in 1985 states, “Additional threats include the possible introduction of exotic fishes into the springs, which could have disastrous effects on the endemic. Fosskett speckled dace, either through competitive exclusion, predation, or

introduced disease. Because these fishes occur in such limited and remote areas, vandalism also poses a potential threat” (50 FR 12304; March 28, 1985).

No exotic fish introduction or acts of vandalism have occurred since the time of listing. The Foscett speckled dace is vulnerable to invasive or nonnative species (aquatic plants, invertebrates, or fish species). However, this vulnerability is reduced in part due to the remoteness of the site and the lack of recreational or other reasons for the public to visit the area. It is also reduced by the establishment of a refuge population in Dace Spring. While the risk of introductions is low, the potential impact is high due to the highly restricted distribution of the Foscett speckled dace. The CMP includes quarterly monitoring and an emergency contingency plan to address potential threats from introduction of nonnative species or pollutants. Although the introduction of an exotic species represents a potential threat to the Foscett speckled dace, we believe the risk is low based on the isolation of the site, the minimal visitor use of the springs, the lack of connectivity to other waterways, and the monitoring agreed to and occurring in accordance with the CMP.

Other Risk Factors

A species' habitat requirements, population size, and dispersal abilities, among other factors, help to determine its vulnerability to extinction. Key risk factors include small population size, dependence on a rare habitat type, inability to move away from sources of stress or habitat degradation, restrictions to a small geographic area, and vulnerability to catastrophic loss resulting from random or localized disturbance (Williams *et al.* 2005, p. 27). The Service listed the Foscett speckled dace in 1985 (50 FR 12302; March 28, 1985), in part due to these factors. This species had a very restricted natural range, it occurred in low numbers in a small spring that was extremely vulnerable to destruction or modification due to its small size, and a water flow rate of less than 0.5 ft³ per second (0.01 m³ per second). Additionally, the habitat upon which the Foscett speckled dace depends is fragile and has been affected by past livestock grazing and mechanical modification.

Small Population Size

Surveys by the ODFW from 2005 through 2017 have documented that the number of Foscett speckled dace vary considerably through time and by habitat type (see Table 1, above), and

available open-water habitat, which fluctuates annually, appears to be the key factor in determining the population size of this species (Scheerer *et al.* 2016, p. 8). The lowest population estimate was 751 fish (using the Lincoln-Petersen model) in 2011, and no individuals were documented in the cattail marsh that year (see Table 1, above). Management to create more open water in the marsh habitat at Foscett Spring was initiated in 2012 and completed in 2014, increasing the amount of open-water habitat by 150 percent, to approximately 358 yds² (300 m²) (Scheerer *et al.* 2016, pp. 7–9). The increase in fish abundance in 2013 through 2015 was notable, especially in the two habitats where management occurred (see Table 1, above).

Based on the relationship between the amount of open water and the number of Foscett speckled dace, the CMP includes removing encroaching vegetation to enhance open-water habitat, and excavating open-water pools. These activities will be conducted every 5 to 10 years or as determined necessary to maintain open-water habitat to support healthy populations of Foscett speckled dace.

Additionally, the ongoing effort by the BLM and the Service to restore Dace Spring provides the potential for a refuge population of Foscett speckled dace. Two ponds have been created and connected to the outlet channel of Dace Spring; Foscett speckled dace have been translocated to the ponds (see Table 2, above). Reproduction and an associated population increase was documented by the ODFW in 2014, 2015, 2016, and 2017. The ODFW is currently evaluating the status of the Foscett speckled dace in the new ponds, and, although results are positive, it is premature to predict long-term viability of the Dace Spring population. While our proposal to delist Foscett speckled dace is not dependent on the establishment of a refuge population, the redundancy of a second population of Foscett speckled dace provides additional robustness to the species' overall status.

Dependence Upon a Specific Rare Habitat Type and Inability To Disperse

This species is known to occupy only Foscett Spring and Dace Spring. Due to the small size of Foscett Spring and the lack of connectivity to other aquatic habitat, there is no opportunity for the Foscett speckled dace to disperse away from stress, habitat degradation, or disturbance factors. There are no streams or drainages or other aquatic connections that provide alternate habitat or allow for emigration. As noted previously in this proposed rule, the

BLM created two new ponds connected to the outlet channel of Dace Spring, and the ODFW has introduced Foscett speckled dace into these ponds in an attempt to establish a refuge population.

Restriction to a Small Geographic Area and Vulnerability to Stochastic Events

The Foscett speckled dace is restricted to one small spring and has been translocated to two small, constructed ponds at an adjacent spring. The available open-water habitat at Foscett Spring is naturally limited, and encroaching aquatic vegetation periodically limits suitable habitat. However, removing sediments and vegetation to increase open-water habitat is a proven conservation measure that results in a significant increase in fish abundance. Because of its restricted natural distribution and dependence on a single water source, the Foscett speckled dace is more vulnerable to threats that may occur than species that are more widely distributed. While our proposal to delist Foscett speckled dace is not dependent on the existence of a second population, the redundancy of a second population of Foscett speckled dace, should it prove viable over the long term, increases the resiliency of the species and may reduce vulnerability to stochastic events and any future threats that may appear on the landscape.

Additionally, the CMP provides for management of Foscett Spring and Dace Spring areas for the long-term conservation of the Foscett speckled dace. Although it is difficult to plan for and address catastrophic events, quarterly site visits and habitat and population surveys conducted regularly will facilitate the timely detection of changes to the habitat and as well as other unforeseen future threats.

Effects of Climate Change

We also analyzed the effects of changing climate to the Foscett speckled dace and its habitat. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). “Climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (*e.g.*, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Changes in

climate can have direct or indirect effects on species, may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we used our expert judgment to weigh relevant information, including uncertainty, in considering the effects of climate change on the Foscett speckled dace.

Global climate projections are informative and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (IPCC 2007, pp. 8–12). Therefore, we use “downscaled” projections when they are available and have been developed through appropriate scientific procedures because such projections provide higher-resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

Downscaled projections were available for our analysis of the Foscett speckled dace from the U.S. Geological Survey (USGS) (https://www2.usgs.gov/climate_landuse/clu_rd/nccv/viewer.asp). The National Climate Change Viewer is based on the mean of 30 models which can be used to predict changes in air temperature for the Warner Lakes basin in Lake County, Oregon. The models predict an increase in the mean maximum air temperature of 3.2 °F (1.8 °C) and an increase in the mean annual minimum air temperature of 3.1 °F (1.7 °C) in the 25-year period from 2025 to 2049. Mean precipitation is not predicted to change, but annual snow accumulation is predicted to decrease by 0.4 in (10.16 millimeters (mm)) during the same period.

Over the ensuing 25-year period from 2050 to 2074, the mean annual maximum air temperature is predicted to increase by 4.9 degrees °F (2.7 °C), and the change in mean annual minimum air temperature is predicted to increase by 4.3 °F (2.4 °C). The 2050 to 2074 model predicts no change in the mean annual precipitation and annual snow accumulation is predicted to decrease by 0.4 in (9.6 mm) for the Warner Lakes basin (Alder and Hostetler 2013, entire).

Increase in the ambient air temperature may cause slight warming of Foscett Spring surface water. This may reduce the overall amount of habitat available for Foscett speckled

dace due to an increase in water temperatures, especially at the lower end of the outlet stream and marsh habitat; however, Foscett speckled dace prefer the spring and pool habitats through the stream portion of the outlet channel. Changes to precipitation, aquifer recharge, or vegetative community around Foscett Spring as a result of climate change would not likely have an impact on Foscett speckled dace. The occupied habitat is fed from a spring that has a fairly consistent temperature of approximately 65 °F (18 °C), and the vegetative community is not likely to change from the predicted temperature increases.

Summary of Factor E

The original listing rule in 1985 (50 FR 12302; March 28, 1985) identified introduction of exotic fishes as a potential threat. However, in over 30 years of monitoring, no exotic fishes have been detected, and there is no evidence of attempts to introduce exotic fish species. Other potential threats such as small population size, dependence on a specific or rare habitat type, the inability to disperse, restriction to a small geographic area, vulnerability to stochastic events, and climate change also have been assessed and determined to be minimal. Based on the best available information, we conclude that other natural or manmade factors do not constitute a substantial threat to the Foscett speckled dace now or in the foreseeable future.

Cumulative Impacts

Together, the factors discussed above could result in cumulative impacts to the Foscett speckled dace. For example, effects of cattle grazing directly on the habitat in combination with mechanical disturbances could result in a greater overall impact to Foscett speckled dace habitat. Although the types, magnitude, or extent of cumulative impacts are difficult to predict, we are not aware of any combination of factors that have not already been, or would not be, addressed through ongoing conservation measures that are expected to continue post-delisting and into the future, as described above. The best scientific and commercial data available indicate that the species is relatively abundant, and that the factors are not currently resulting, nor are they anticipated to cumulatively result, in reductions in Foscett speckled dace numbers and/or to the species' habitat.

Proposed Determination of Species Status

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50

CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants (listed). The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.”

On July 1, 2014, we published a final policy interpreting the phrase “significant portion of its range” (SPR) (79 FR 37578). In our policy, we interpret the phrase “significant portion of its range” in the Act's definitions of “endangered species” and “threatened species” to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an “endangered species.” The same analysis applies to “threatened species.”

Our final policy addresses the consequences of finding a species is in danger of extinction in an SPR, and what would constitute an SPR. The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered species or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is “significant” if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather

than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our assessment of the status of a species is to determine its status throughout all of its range. Depending on the status throughout all of its range, we will subsequently examine whether it is necessary to determine its status throughout a significant portion of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. The same factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

As described in our policy, once the Service determines that a "species"—which can include a species, subspecies, or distinct population segment (DPS)—meets the definition of "endangered species" or "threatened species," the species must be listed in its entirety and the Act's protections applied consistently to all individuals of the species wherever found (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Thus, the first step in our assessment of the status of a species is to determine its status throughout all of its range. Depending on the status throughout all of its range, we will subsequently examine whether it is necessary to determine its status throughout a significant portion of its range. Under section 4(a)(1) of the Act, we determine whether a species is an endangered species or threatened species because of any of the following: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. These five factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

Foskett Speckled Dace—Determination of Status Throughout All of Its Range

We conducted a review of the status of Foskett speckled dace and assessed the five factors to evaluate whether Foskett speckled dace is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. We found that, with periodic management, Foskett speckled dace populations are persistent but cyclical within a range of 751 to 24,888 individuals over the last decade (Table 1). During our analysis, we found that impacts believed to be threats at the time of listing are either not as significant as originally anticipated or have been eliminated or reduced since listing, and we do not expect any of these conditions to substantially change post-delisting and into the foreseeable future, nor do we expect the effects of climate change to affect this species. The finalization of the CMP acknowledges the "conservation-reliant" nature of Foskett speckled dace and the need for continued management of the habitat at Foskett Spring and affirms the BLM, ODFW, and Service will continue to carry out long-term management actions. Long-term management actions and elimination and reduction of threats apply to all populations of the species, such that both populations are secure.

We conclude that the previously recognized impacts to the Foskett speckled dace no longer are a threat to the species. In order to make this conclusion, we analyzed the five threat factors used in making Endangered Species Act listing (and delisting) decisions.

Foskett Speckled Dace—Determination of Status Throughout a Significant Portion of Its Range

Because we determined that Foskett speckled dace is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we will consider whether there are any significant portions of its range in which the species is in danger of extinction or likely to become so. To undertake this analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. To identify only those portions that warrant further consideration, we determine whether there are any portions of the species' range: (1) That may be "significant," and (2) where the species may be in danger of extinction or likely to become so in the foreseeable future. We emphasize that answering

these questions in the affirmative is not equivalent to a determination that the species should be listed—rather, it is a step in determining whether a more-detailed analysis of the issue is required.

If we identify any portions (1) that may be significant and (2) where the species may be in danger of extinction or likely to become so in the foreseeable future, we conduct a more thorough analysis to determine whether both of these standards are indeed met. The determination that a portion that we have identified does meet our definition of significant does not create a presumption, prejudgment, or other determination as to whether the species is in danger of extinction or likely to become so in the foreseeable future in that identified SPR. We must then analyze whether the species is in danger of extinction or likely to become so in the SPR. To make that determination, we use the same standards and methodology that we use to determine if a species is in danger of extinction or likely to become so in the foreseeable future throughout all of its range (but applied only to the portion of the range now being analyzed).

We evaluated the range of the Foskett speckled dace to determine if any area may be significant. The Foskett speckled dace is endemic to Foskett Spring in the Warner Basin. The historical known natural range of the Foskett speckled dace is limited to Foskett Spring. At the time of listing in 1985, Foskett speckled dace also occurred at nearby Dace Spring, located approximately one-half mile south of Foskett Spring, where translocation of specimens from Foskett Spring was initiated in 1979. Because of its narrow range limited to two springs within half mile of each other, and because speckled dace currently occupying Dace Spring originated from translocations from Foskett Spring, we find that the species is comprised of is a single, population and there are no logical biological divisions delineating portions of the range. For this reason, we did not identify any portions that may be significant because of natural or biological divisions indicating biological or conservation importance.

A key part of identifying portions appropriate for further analysis is whether the threats are geographically concentrated. If a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and the threats to the species are essentially uniform throughout its range, then there is no basis on which to conclude that the species may be in danger of extinction or likely to become so in the foreseeable

future in any portion of its range. Therefore, we also examined whether any threats are geographically concentrated in some way that would indicate the species may be in danger of extinction, or likely to become so, in a particular area. We conclude that none of them are concentrated in any particular area of the species' range. Although some of the factors we evaluated in the Summary of Factors Affecting the Species section above occur in specific habitat types (*i.e.* the spring pool, stream habitat, and marsh habitat), the factors affecting the Foscett speckled dace occur at similarly low levels throughout its range and would affect all individuals of the population. Additionally, because the species acts as a single population, no portion is likely to have a different status or be differently affected by threats than any other portion or than that of the species throughout all of its range. Therefore, even if Foscett Spring and the nearby Dace Spring were considered to be separate portions of the species' range, no threats or their effects are sufficiently concentrated to indicate the species may be in danger of extinction, or likely to become so in either area. As noted earlier in this rule, our proposal to delist Foscett speckled dace is not dependent on establishment of a refuge population at Dace Spring. However, the redundancy of a second population of Foscett speckled dace at Dace Spring, should it prove viable over the long term, provides increased resiliency to the species' overall status and may reduce vulnerability to stochastic events and any future threats that may appear on the landscape. For these reasons, we conclude that the species is not in danger of extinction, or likely to become so, throughout a significant portion of its range.

Conclusion

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Foscett speckled dace. The threats that led to the species being listed under the Act (primarily the species' extremely restricted and vulnerable habitat which was being modified; Factor A) have been removed or ameliorated by the actions of multiple conservation partners over the past 30 years; these include securing the property and developing long-term management strategies to ensure that appropriate habitat is maintained. Given various authorities that enabled the three cooperating agencies to enter into the Foscett Speckled Dace CMP, and the long record of engagement and proactive

conservation actions implemented by the three cooperating agencies over a 30-year period, we expect conservation efforts will continue to support a healthy viable population of the Foscett speckled dace post-delisting and into the foreseeable future. Because the species is not in danger of extinction now or in the foreseeable future throughout all of its range or any significant portion of its range, the species does not meet the definition of an endangered species or threatened species. We conclude the Foscett speckled dace no longer requires the protection of the Act, and, therefore, we are proposing to remove it from the Federal List of Endangered and Threatened Wildlife.

Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11(h) by removing the Foscett speckled dace from the Federal List of Endangered and Threatened Wildlife. Accordingly, we would also remove the Foscett speckled dace from the rule promulgated under section 4(d) of the Act at 50 CFR 17.44(j). The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Foscett speckled dace. No critical habitat has been designated for Foscett speckled dace, so there would be no effect to designated critical habitat. State laws related to the Foscett speckled dace would remain in place and be enforced and would continue to provide protection for this species.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires the Secretary of the Interior, through the Service and in cooperation with the States, to implement a system to monitor for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain populations without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

A draft PDM plan has been developed for the Foscett speckled dace, building on and continuing the research that was conducted during the listing period. The draft PDM plan will be peer reviewed by

specialists and available for public comment upon the publication of this proposed rule. Public and peer review comments submitted in response to the draft PDM plan will be addressed within the body of the plan and summarized in an appendix to the plan. The draft PDM plan was developed by the Service and ODFW. The draft PDM plan consists of: (1) A summary of the species' status at the time of proposed delisting; (2) an outline of the roles of PDM cooperators; (3) a description of monitoring methods; (4) an outline of the frequency and duration of monitoring; (5) an outline of data compilation and reporting procedures; and (6) a definition of thresholds or triggers for potential monitoring outcomes and conclusions of the PDM.

The draft PDM plan proposes to monitor Foscett speckled dace populations following the same sampling protocol used by the ODFW prior to delisting. Monitoring would consist of two components: Foscett speckled dace distribution and abundance, and potential adverse changes to Foscett speckled dace habitat due to environmental or anthropogenic factors. The PDM would continue for 9 years, which would begin after the final delisting rule is published. Monitoring through this time period would allow us to address any possible negative effects to the Foscett speckled dace.

The draft PDM plan identifies measurable management thresholds and responses for detecting and reacting to significant changes in the Foscett speckled dace's protected habitat, distribution, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines, including considerations of habitat changes, substantial human persecution, stochastic events, or any other significant evidence. The result of the investigation will be to determine if the Foscett speckled dace warrants expanded monitoring, additional research, additional habitat protection, or relisting as a threatened or endangered species under the Act. If relisting the Foscett speckled dace is warranted, emergency procedures to relist the species may be followed, if necessary, in accordance with section 4(b)(7) of the Act.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We do not believe that any Tribes will be affected by this rule. However, we have contacted the Burns Paiute Tribe to coordinate with them regarding the proposed rule.

References Cited

A complete list of all references cited in this proposed rule is available at <http://www.regulations.gov> or upon request from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this proposed rule are staff members of the Service's Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

- 2. Amend § 17.11(h) by removing the entry for “Dace, Foscett speckled” under FISHES from the List of Endangered and Threatened Wildlife.

§ 17.44 [Amended]

- 3. Amend § 17.44(j) by:
 - a. Removing the words “and Foscett speckled dace (*Rhinichthys osculus* subspecies)” from the introductory text; and
 - b. In paragraphs (j)(1) and (j)(2), removing the word “these” in both places it appears and adding in its place the word “this”.

Dated: November 15, 2017.

James W. Kurth,

Deputy Director for U.S. Fish and Wildlife Service Exercising the Authority of the Director for U.S. Fish and Wildlife Service.
[FR Doc. 2017–28465 Filed 1–3–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2017–0094; 4500030113]

RIN 1018–BC52

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Barrens Topminnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Barrens topminnow (*Fundulus julisia*), a freshwater fish from Tennessee, as an endangered species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species.

DATES: We will accept comments received or postmarked on or before March 5, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 20, 2018.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R4–ES–2017–0094, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2017–0094, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

FOR FURTHER INFORMATION CONTACT: Mary Jennings, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street,

Cookeville, TN 38506; telephone 931–528–6481. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The Barrens topminnow's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information related to climate change within the range of the Barrens topminnow and how it may affect the species' habitat.

(6) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*).

(7) Specific information on:

(a) What areas, that are currently occupied and that contain the physical and biological features essential to the conservation of the Barrens topminnow, should be included in a critical habitat designation and why;

(b) Special management considerations or protection that may be needed for the essential features in potential critical habitat areas, including managing for the potential effects of climate change; and

(c) What areas not occupied at the time of listing are essential for the conservation of the species and why.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in

ADDRESSES. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act requires us to conduct one or more public hearings on this proposal, if requested. Requests for a public hearing must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**, above) and must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if requested, and announce the dates, times, and places of those

hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the species status assessment (SSA) that informed this proposed rule. All of the peer reviewers have expertise in fish biology, habitat, and stressors to the Barrens topminnow. We received a response from one of the six peer reviewers, which we took into account in our SSA and this proposed rule. We invite any additional comment from the peer reviewers on the proposed rule during this public comment period; all comments received from peer reviewers will be available, along with other public comments, in the docket for this proposed rule on <http://www.regulations.gov>.

Previous Federal Actions

The Barrens topminnow was initially proposed to be listed as endangered under the Act in 1977 (42 FR 65209; December 30, 1977). Because of comments received on the proposed critical habitat, the listing was postponed, and critical habitat was repropounded in 1979 (44 FR 44418; July 27, 1979); however, the proposed listing rule was withdrawn in 1980, because it was not finalized within the required 2 years (45 FR 5782; January 24, 1980, effective December 30, 1979). The Barrens topminnow was designated a Category 2 candidate species in 1982 (47 FR 58454; December 30, 1982) until that list was discontinued in 1996 (61 FR 7596; February 28, 1996), and it was not added to the revised candidate list. In 2010, the Center for Biological Diversity (CBD) petitioned the Service to list 404 aquatic, riparian, and wetland species from the southeastern United States, including the Barrens topminnow, as endangered or threatened under the Act. On September 27, 2011, the Service published a substantial 90-day finding for 374 of the 404 species, including the Barrens topminnow, soliciting information about, and initiating status reviews for, those species (76 FR 59836). In 2015, CBD filed a complaint against the Service for failure to timely

complete a 12-month finding for the Barrens topminnow. In 2016, the Service entered into a settlement agreement with CBD, which specified that a 12-month finding for the Barrens topminnow would be delivered to the **Federal Register** by December 31, 2017.

Background

A thorough review of the taxonomy, life history, ecology, and overall viability of the Barrens topminnow (*Fundulus julisia*) is presented in the SSA (Service 2017; available at <http://www.regulations.gov>). In the SSA, we summarize the relevant biological data and a description of past, present, and likely future stressors, and conduct an analysis of the viability of the species. The SSA documents the results of the comprehensive biological status review for the Barrens topminnow, provides an account of the species' overall viability through forecasting of the species' condition in the future, and provides the scientific basis that informs our regulatory decision regarding whether this species should be listed as an endangered or threatened species under the Act as well as the risk analysis on which the determination is based (Service 2017, entire). The following discussion is a summary of the results and conclusions from the SSA.

Species Description

The Barrens topminnow is a small, colorful fish that grows to 98 millimeters (mm) (3.9 inches (in)). As is typical of its genus, *Fundulus*, the Barrens topminnow has an upturned mouth, flattened head and back, and rounded fins with the unpaired fins set far back on the body (Etnier and Starnes 1993, pp. 360–361). Reproductive males are very showy with bright, iridescent background colors of greens and blues, with reddish orange spots and yellow fins as well as tubercles (hardened projections) on the anal fin rays. Females, juveniles, and non-reproductive males are drabber, with pale brown bodies sprinkled with darker spots on the sides (Williams and Etnier 1982, entire; Etnier and Starnes 1993, pp. 365–366). A detailed description of scale and fin ray counts and other morphological features is provided in Williams and Etnier (1982, entire) and Etnier and Starnes (1993, p. 365).

Reproduction and Lifespan

Barrens topminnows spawn in filamentous algae near the water surface, between April and August, with peak activity occurring from May to June. Spawning occurs on multiple occasions, with a few eggs released

during each spawning event. By the end of the spawning season, up to 300 eggs are released. While the maximum age of the Barrens topminnow is 4 years, adults typically live for 2 years or less, and only about one-third of individuals spawn more than one season (Rakes 1989, p. 42; Etnier and Starnes 1993, p. 366). Most individuals mature and spawn within the first year, though some of the later spawned fish are in year 2 before they spawn (Rakes 1989, entire).

Prey items consumed by Barrens topminnows consist predominantly of microcrustaceans and immature aquatic insect larvae. However, the species is a generalist feeder, also consuming small snails and terrestrial organisms such as ants and other insects that fall or wander into aquatic habitats (Rakes 1989, pp. 18–25).

Habitat and Range

Barrens topminnow habitat is restricted to springhead pools and slow-flowing areas of spring runs on the Barrens Plateau in middle Tennessee. These fish are strongly associated with abundant aquatic vegetation such as filamentous algae (e.g., *Cladophora* and *Pithophora*), watercress (*Nasturtium officinale*), rushes (*Juncus*), pondweed (*Potamogeton*), and eelgrass (*Vallisneria*), and will occasionally shelter under overhanging terrestrial plants and tree roots. Barrens topminnows have only been found in streams where the predominant source of base flow is groundwater. Due to the groundwater influence of these habitats, temperatures are relatively stable, ranging from 15 to 25 degrees Celsius (°C) (59 to 77 degrees Fahrenheit (°F)). The karst topography of the Barrens Plateau results in the presence of a number of spring systems, though not all of these have been inhabited by the Barrens topminnow. In times of drought, if the discharge of the springs is severely reduced, Barrens topminnows likely move downstream into more permanent water if suitable habitat is available.

Historically, Barrens topminnows were found in Cannon, Coffee, and Warren Counties of Tennessee in three river systems, the Elk River, Duck River, and Caney Fork River. The Elk River and Duck River flow to the Tennessee River, and the Caney Fork River flows to the Cumberland River. The small streams or springs inhabited by Barrens topminnows in each river system are separated by hundreds of miles of intervening, unsuitable, larger stream habitat; therefore the individual populations are isolated and cannot come into contact with other

populations by moving downstream. Within these three systems, the Barrens topminnow was known to occur in at least 18 sites (Hurt *et al.* 2017, p. 2). It is likely that many more sites were occupied, but were either not surveyed due to lack of access to private land, or were modified to be incompatible with Barrens topminnow presence for uses such as watering livestock before surveys could be conducted.

Currently, the Barrens topminnow occurs in five sites: Marcum Spring (Ovaca Spring), Short Spring, Benedict Spring, McMahan Creek, and Greenbrook Pond. Marcum Spring and Short Spring are in the Duck River system. The remaining three springs are in the Caney Fork River system. Benedict Spring and McMahan Creek are occupied by native stock, while the three other occupied sites were reestablished with individuals from the Caney Fork system (see discussion under *Conservation Actions and Regulatory Mechanisms*, below). Greenbrook Pond, although it ultimately drains to the Caney Fork, is outside the known historical range of the species, in Dekalb County, Tennessee. Although no longer extant at its native locality, the Pond Spring population from the Elk River system is maintained in captivity at three facilities. Collectively, these captively held topminnows form an “ark population” that is managed as part of a conservation strategy that will enable release back into the wild if Pond Spring can be restored.

Estimates of current population size by site are lacking, but recent surveys (Kuhajda *et al.* 2014, entire; Kuhajda 2017, entire) reported the number of Barrens topminnows captured (Table 1, below), providing a rough approximation of the number of topminnows in each population. Based on these samples, Benedict Spring, Marcum Spring, and Greenbrook Pond had fairly robust populations, with at least, or likely with more than, 100 individuals. The population in McMahan Creek appeared to be small relative to other occupied sites, but this difference is at least partly an artifact of sampling bias. In stream habitat such as McMahan Creek, habitat structure makes it easier for fish to avoid the seine, and fish tend to be more broadly dispersed than they are in pond-like spring habitats.

TABLE 1—NUMBER OF BARRENS TOPMINNOWS CAPTURED BY SITE (KUHAJDA 2017, ENTIRE) MCMAHAN CREEK NUMBER FROM 2017 SAMPLING (SERVICE, UNPUBLISHED)

Site	Barrens topminnows captured (year)
Benedict Spring	100 (2016)
McMahan Creek	10 (2017)
Marcum Spring	132 (2015)
Short Spring	30 (2015)
Greenbrook Pond	91 (2015)

Species Needs

In this section, we describe the needs of the species at the individual, population, and species level. We describe the Barrens topminnow's viability needs in terms of resiliency (ability of the populations to withstand stochastic events), redundancy (ability of the species to withstand large-scale, catastrophic events), and representation (the ability of the species to adapt to changing environmental conditions). In later sections, using various time frames and the current and projected resiliency, redundancy, and representation, we will describe the species' viability over time.

Barrens topminnows need filamentous algae or other submerged vegetation for egg deposition and cover, and consistently cool water ranging from 15 to 25 °C (59 to 77 °F) that is sufficiently clear for mating display (Rakes, 1989, entire). For feeding, they need microcrustaceans and immature aquatic insect larvae (Rakes 1989, pp. 18–25). At the larval and juvenile stage, it is essential that predation rates and competition from other fishes is low (Laha and Mattingly 2006, pp. 1, 6–10).

Resiliency

For the Barrens topminnow to maintain viability, its populations or some portion thereof must be resilient. Stochastic events that affect resiliency are reasonably likely to occur infrequently, but are of a magnitude that can drastically alter the ecosystem where they happen. Classic examples of stochastic events include drought, major storms (hurricanes), fire, and landslides (Chapin et al. 2002, pp. 285–288). To be resilient to stochastic events populations of Barrens topminnow need to be sufficiently abundant, with several hundred individuals (Service 2017, p. 11) represented by adult and juvenile age classes. The larger the range, or spatial extent, occupied by a Barrens topminnow population, the more resilient the population will be to a stochastic event. Additionally,

populations need to exist in locations where environmental conditions provide suitable habitat and water quality such that adequate numbers of individuals can be supported. Without all of these factors, a population has an increased likelihood of extirpation.

Representation

Maintaining representation in the form of genetic diversity is important to the Barrens topminnow's capacity to adapt to environmental changes. Ecological diversity, another measure of species' representation, is naturally low, as the Barrens topminnow has always been restricted to spring habitats in a single physiographic province. Based on mitochondrial DNA, genetic variation of extant populations is extremely low, and there are fixed differences between the Caney Fork system populations and the Elk River system population (Hurt et al. 2017, pp. 1, 5), which is from Pond Spring and is represented now only by individuals held in captivity. The captive Elk River population, for which there are two identified mitochondrial DNA haplotypes unique from the third haplotype present in all Caney Fork system sampled fish, should be considered an evolutionary significant unit (ESU) (Hurt et al. 2017, p. 5), a historically isolated population that is on an independent evolutionary trajectory (Moritz 1994, p. 373). Accordingly, reestablishing the captive Elk River population in the wild will be important to increasing genetic representation and species' viability.

Redundancy

Finally, the Barrens topminnow needs to have multiple resilient populations distributed throughout its range to provide redundancy, the ability of the species to withstand catastrophic events. The more populations, and the wider the distribution of those populations, the more redundancy the species will exhibit. Redundancy reduces the risk that a large portion of the species' range will be negatively affected by a catastrophic natural or anthropogenic event at a given point in time. Species that are well-distributed across their historical range are considered less susceptible to extinction and have higher viability than species confined to a small portion of their range (Carroll et al. 2010, entire; Redford et al. 2011, entire).

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an

“endangered species” or a “threatened species.” The Act defines an endangered species as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act directs us to determine whether any species is an endangered species or a threatened species because of one or more of the following factors affecting its continued existence: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as for those that may ameliorate any negative effects and those that may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). A threat may encompass—either together or separately—the source of the action or condition, or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any

existing regulatory mechanisms or conservation efforts. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them or have positive effects on the species, and describing the expected effect on the species now and in the foreseeable future, that the Secretary can determine whether the species meets the definition of an “endangered species” or a “threatened species.” We completed a comprehensive assessment of the biological status of the Barrens topminnow, and prepared a report of the assessment which provides a thorough account of the species’ overall viability and evaluates the cumulative effects of the five listing factors (Service 2017, entire).

Risk Factors

In the SSA, we assessed the potential risk factors (*i.e.*, threats, stressors) that could be affecting the Barrens topminnow now and in the future. In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Those risks that are not known to have effects on Barrens topminnow populations, such as collection and disease, are not discussed here.

The primary risk factor affecting the status of the Barrens topminnow is western mosquitofish (*Gambusia affinis*), a species invasive to the Barrens Plateau that preys on young topminnows, harasses older individuals, and may compete with adults for space and food (Factor C).

Western mosquitofish are native to Tennessee, but their range within the State was most likely confined to the Coastal Plain province (Etnier and Starnes 1993, p. 373), and they are not native to the Barrens Plateau. In many parts of North America, western mosquitofish were stocked in attempt to control mosquito larvae, which is presumably the means by which they were introduced to the Barrens Plateau in the mid twentieth century. Although to the best of our knowledge mosquitofish stocking stopped shortly thereafter, the species has spread and become a permanent inhabitant throughout most of the Barrens Plateau. Mosquitofish are well adapted to spread in habitats where they are introduced because they reproduce rapidly, spawning three to four cohorts per year of a few to a hundred or more individuals (Etnier and Starnes 1993, p. 373). They can move through very shallow water and have invaded sites connected by temporarily wetted areas created by floods. Mosquitofish prey on young topminnows and harass adults,

causing recruitment failure such that only the adult age class remains after a spawning season (Goldsworthy and Bettoli 2006, p. 341; Laha and Mattingly 2007, p. 9). Under most circumstances, extirpation of Barrens topminnows occurs within 3 to 5 years of mosquitofish invading a site (Service 2017, p. 32). The five extant Barrens topminnow populations are at sites free of mosquitofish.

As a consequence of the western mosquitofish invasion, the habitat available to the Barrens topminnow, and the species’ range, has been curtailed (Factor A). Historically, Barrens topminnow populations were likely connected by floods and high flow events that washed individuals downstream or provided temporary connections across local stream divides. Most, if not all, pathways via flood-facilitated migration are no longer viable owing to the presence of mosquitofish. Many of the sites where the topminnow is extirpated currently have sufficient habitat quality to support populations (Kuhajda et al. 2014, entire; Kuhajda 2017, entire). Thus, it is the presence of mosquitofish rather than habitat that is limiting Barrens topminnow populations because mosquitofish prevent topminnows from colonizing previously occupied springs in their range. This reduction in connectivity contributes to reduced gene flow, which in turn reduces genetic diversity and species’ representation. Additionally, the lost connectivity contributes to the diminished range (number of occupied sites), which has caused a reduction in species’ redundancy.

Reduced habitat availability has exacerbated the threat of drought (Factor E), which has greatest effect on one of the two remaining native populations, at Benedict Spring. Approximately once every 5 years, drought results in Benedict Spring drying completely or nearly so, to the point that it can no longer support the Barrens topminnow. In these years, all topminnows are removed from Benedict Spring and placed in aquaria, where they are held until water levels return. Under natural (*i.e.*, mosquitofish free) conditions, drought would not be a concern because Barrens topminnows would recolonize areas in wetter years; however, due to the widespread reduction in suitable habitat due to mosquitofish and the resulting small number of remaining populations, the loss of any population is a concern.

Conservation Actions and Regulatory Mechanisms

There have been many targeted efforts since circa 1980 to conserve the Barrens

topminnow. Without these efforts it is likely the species would persist only at one site, McMahan Spring, which has not gone dry during periods of drought and is not occupied by mosquitofish. In 2001, the Barrens Topminnow Working Group, consisting of the Tennessee Wildlife Resources Agency, the Service, universities, and nonprofit organizations, was created to coordinate actions such as habitat improvement, propagation, and reintroduction of the species in the wild. Since the initiation of the stocking program, more than 44,000 Barrens topminnows have been reintroduced in 27 sites deemed to have appropriate habitat. Brood fish were taken from McMahan Creek and Benedict Spring in the Caney Fork watershed, and Pond Spring in the Elk River watershed. Reintroduction was unsuccessful at most of these sites, either because of insufficient or marginal habitat or the invasion of mosquitofish (Goldsworthy and Bettoli 2005, entire). At the 2016 Working Group meeting, the decision was made to stop the stocking program because it was no longer needed to maintain populations at suitable sites that lack mosquitofish, and at other sites, continued stocking was unlikely to establish self-sustaining populations.

One of the stocked sites, Vervilla Spring, was situated in the Caney Fork watershed on land opportunistically purchased by the Service for Barrens topminnow reintroduction. When the land came under the management of Tennessee National Wildlife Refuge, mosquitofish were present in the spring on the property and topminnows were not. To improve habitat for topminnows at the site, spring pools were deepened, a concrete low water barrier was installed, and the mosquitofish removed with a piscicide. Topminnows from Benedict Spring were then stocked above the barrier. This population was stocked in 2001, and maintained viability until 2010, when mosquitofish reinvaded the spring during a flood. In 2011, only adults were present, and by 2013, no Barrens topminnows remained in Vervilla Spring.

From the late 1980s into the 2000s, the Service’s Partners for Fish and Wildlife program worked with landowners to exclude livestock from the springs and spring runs where Barrens topminnows occurred in an effort to curb sedimentation. None of these Partners agreements is currently active. However, there are still buffers that exclude livestock from topminnow habitat in place at some sites, many which have since been invaded by mosquitofish.

Current Condition

As discussed above, only five remaining populations of Barrens topminnow remain (see Table 1, above), in contrast to at least 18 identified historical populations (occupied sites) and likely several more that were extirpated without having been first identified. Thus, there has been at least a 72 percent reduction in the number of populations in the wild. Furthermore, the number of native populations has been reduced by at least 89 percent. The only population known to be native in the Elk River watershed, from Pond Spring, is now maintained as a captive “ark population” at three facilities. In the Duck River system, native populations were extirpated by the late 1960s (Etnier and Starnes 1993, p. 366), and if there was any genetic component unique to the Duck River system, it has been lost. The only two remaining native populations are at Benedict Spring and McMahan Creek.

In summary, the current condition for each of the conservation metrics of resiliency, redundancy, and representation is low. Regarding resiliency, four of the five extant populations are of moderate size, likely with 100 individuals or more. The other population is smaller, although based on recent surveys it appears to be persisting and recruiting new cohorts each year. However, even if the number of individuals in each population is sufficient to maintain future generations, all currently occupied sites are small and vulnerable to stochastic events, so that a disturbance would adversely affect a site and its whole population equally. Regarding redundancy, at least 16 of 18 native populations (89 percent) have been lost, with only 5 populations remaining in the wild. Thus, the spatial distribution of a naturally narrow-ranging endemic has become more concentrated, making the species more susceptible to a catastrophic event. Lastly, representation has been reduced and the species’ adaptive capacity may be limited as there is little genetic variation between extant populations. Native stock from the Elk River and Duck River has been extirpated, although members of the Elk River population survive in captivity.

Future Condition

As part of the SSA, we developed three future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the Barrens topminnow. Our scenarios included a status quo scenario, which incorporated

the current risk factors continuing on the same trajectory that they are on now. We also evaluated a best case scenario, under which management actions to exclude mosquitofish and reintroduce populations would occur. Finally, we evaluated a worst case scenario, under which no management actions would be applied and climate change would increase the frequency and magnitude of droughts and floods. Regarding the likelihood of each scenario transpiring, in the near future (3- to 5-year time frame), the status quo scenario was predicted to be “very likely” and best case and worst case scenarios were “unlikely.” For the SSA, the terms “very likely” and “unlikely” as they apply to confidence are 70–90 percent certain and 10–40 percent certain, respectively (IPCC 2014, p. 2). In 20 to 30 years, the time frame constituting the extent of the foreseeable future, beyond which there is insufficient confidence in how threats will act, the best case scenario was predicted to be “unlikely” and the status quo and worst case scenarios were “as likely as not,” defined as having a 40–70 percent certainty of occurrence (IPCC 2014, p. 2). Because we determined that the current condition of the Barrens topminnow was consistent with that of an endangered species (see Determination, below), and that it is very likely the current condition will persist through the near future, we are not presenting in any more detail how each scenario would likely act on species viability. Please refer to the SSA (Service 2017, pp. 32–42) for the full analysis of future scenarios.

Determination

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of “endangered species” or “threatened species.” The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” We have carefully assessed the best scientific and commercial information available and find that the Barrens topminnow is presently in danger of extinction throughout its entire range based on the severity and immediacy of threats currently impacting the species.

The overall range of the Barrens topminnow has been significantly reduced (Factor A), and its remaining populations are threatened by

mosquitofish (Factor C), drought, and small population size (Factor E) acting in combination to reduce the overall viability of the species. The risk of extinction is high because the remaining populations have a high risk of extirpation, are isolated, and have no potential for recolonization without intervening management actions. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Barrens topminnow as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for the Barrens topminnow, as it is already in danger of extinction throughout its range because of the currently contracted range (loss of 79 percent of occupied sites), because the threats are occurring across the entire range of the species, and because the threats are ongoing currently and are expected to continue into the future.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the Barrens topminnow is endangered throughout all of its range, no portion of its range can be “significant” for purposes of the definitions of “endangered species” and “threatened species.” See the Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species” (79 FR 37578; July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop

and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline when a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Subsequently, a recovery plan identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. We intend to make a recovery outline available to the public concurrent with the final listing rule, if listing continues to be warranted. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their ranges may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources,

including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Tennessee would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Barrens topminnow. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the Barrens topminnow is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers, construction and maintenance of roads or highways by the Federal Highway Administration, construction and maintenance of utility corridors by the Tennessee Valley Authority, and construction and maintenance of natural gas or oil pipeline corridors by the Federal Energy Regulatory Commission.

The Act and its implementing regulations set forth a series of general

prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, if we list this species, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(2) Normal residential landscape activities.

Based on the best available information, if we list this species, the

following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Intentional release of mosquitofish into occupied Barrens topminnow habitat;

(2) Unauthorized handling or collecting of the species;

(3) Modification of the water flow of any spring or stream in which the Barrens topminnow is known to occur;

(4) Direct or indirect destruction of stream habitat; and

(5) Discharge of chemicals or fill material into any waters in which the Barrens topminnow is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and translocation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service,

that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudence Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of

critical habitat would not be beneficial to the species.

As discussed above and in the SSA, there is currently no imminent threat to the Barrens topminnow of take attributed to collection or vandalism (Factor B), and identification and mapping of critical habitat would not likely to increase any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of designation include: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to these species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Barrens topminnow.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. As discussed above, we have reviewed the available information pertaining to the biological needs of this species and the habitat characteristics where this species is located. However, a careful assessment of the economic impacts that may occur due to a critical habitat designation is ongoing, and we are in the process of working with the States and other partners in acquiring the complex information needed to perform that assessment. Until these efforts are complete, information sufficient to perform a required analysis of the impacts of the designation is lacking, and, therefore, we find designation of critical habitat for this species to be not determinable at this time. However, we

expect to have the necessary information, and publish a proposed rule in the **Federal Register**, in the near future.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too

long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited is available in Appendix A of the SSA (Service 2017. Species Status Assessment Report for the Barrens Topminnow (*Fundulus julisia*), Version 1.0. Cookeville, TN), available online at <http://www.regulations.gov> under Docket No. FWS–R4–ES–2017–0094.

Authors

The primary authors of this proposed rule are the staff members of the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.
- 2. Amend § 17.11(h) by adding an entry for “Topminnow, Barrens” to the List of Endangered and Threatened Wildlife in alphabetical order under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *				
FISHES				
* * * * *				
Topminnow, Barrens	<i>Fundulus julisia</i>	Wherever found	E	[Insert Federal Register citation when published as a final rule]
* * * * *				

Dated: December 3, 2017.
James W. Kurth,
Deputy Director for U.S. Fish and Wildlife Service, Exercising the Authority of the Director for U.S. Fish and Wildlife Service.
[FR Doc. 2017–28491 Filed 1–3–18; 8:45 am]
BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 83, No. 3

Thursday, January 4, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-58-2017]

Foreign-Trade Zone (FTZ) 23—Erie County, New York; Authorization of Production Activity; Cummins, Inc., Subzone 23D (Diesel and Gas Engines), Lakewood and Jamestown, New York

On August 28, 2017, the Erie County Industrial Development Agency, grantee of FTZ 23, submitted a notification of proposed production activity to the FTZ Board on behalf of Cummins, Inc., within Subzone 23D, in Lakewood and Jamestown, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 44557–44558, September 25, 2017). On December 26, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 28, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017-28478 Filed 1-3-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-072]

Sodium Gluconate, Gluconic Acid, and Derivative Products From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 4, 2018.

FOR FURTHER INFORMATION CONTACT:

Jonathan Hill or Robert Galantucci, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3518 or (202) 482-2923, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On November 30, 2017, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) Petition concerning imports of sodium gluconate, gluconic acid, and derivative product (GNA Products) from the People's Republic of China (China), filed in proper form on behalf of PMP Fermentation Products, Inc. (the petitioner).¹ The CVD Petition was accompanied by antidumping duty (AD) Petitions concerning imports of GNA Products from China and France. The petitioner is a domestic producer of GNA Products.²

On December 5, 2017, Commerce requested supplemental information pertaining to certain areas of the Petition.³ The petitioner filed responses to these requests on December 7, 2017, which included revised scope language.⁴ On December 14, 2017,

¹ See Letter from petitioner to the Secretary of Commerce "Petition for Antidumping and Countervailing Duties: Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China and France," dated November 30, 2017 (Petition).

² *Id.* Volume I of the Petition at 2.

³ See Letter from Robert Bolling, Program Manager, AD/CVD Operation, Office IV, Enforcement and Compliance "Petition for the Imposition of Countervailing Duties on Imports of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Supplemental Questions," dated December 5, 2017.

⁴ See Letter from petitioner to the Secretary of Commerce "Countervailing Duty Investigation of

Commerce had a conference call with the petitioner to discuss the scope of the investigation, and the petitioner filed revised scope language on December 15, 2017.⁵

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of GNA Products in China, and imports of such products are materially injuring, or threatening material injury to, the domestic GNA Products industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioner is requesting.⁶

Period of Investigation

Because the Petition was filed on November 30, 2017, the period of investigation is January 1, 2016 through December 31, 2016.

Scope of the Investigation

The products covered by this investigation are GNA Products from

Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: PMP's Response to the Department's Supplemental Questions on the Petition," dated December 7, 2017 (General Issues and China CVD Response).

⁵ See Memorandum from Celeste Chen, International Trade Analyst, AD/CVD Operations, Office IV to The File "Antidumping and Countervailing Duty Petitions Covering Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China and France: Telephone Conversation Regarding Scope Language," dated December 14, 2017 (Phone Memorandum); see also letter from petitioner to the Secretary of Commerce "Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China and France: Petitioner's Amendment to Volume I of Antidumping and Countervailing Duty Petition," dated December 15, 2017 (Petitioner Scope Revision).

⁶ See "Determination of Industry Support for the Petition" section, below.

China. For a full description of the scope of this investigation, *see* the “Scope of the Investigation,” in the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁷ Commerce also held a conference call with the petitioner regarding the scope language.⁸ As a result of these exchanges, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition.⁹ The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the Preamble to Commerce’s regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).¹⁰ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.¹¹ To facilitate preparation of its questionnaires, Commerce requests all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on January 9, 2018 (20 calendar days from the signature date of this notice). Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on January 19, 2018 (10 calendar days from the initial comments deadline).¹²

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must

be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance’s Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).¹³ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance’s APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC of the receipt of the CVD Petition, and provided them the opportunity for consultations with respect to the Petition.¹⁴ The GOC did not request a consultation.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for

more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹⁵ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁶

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

Regarding the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that sodium gluconate, gluconic acid, and derivative products, as defined in the scope, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.¹⁷

¹⁵ See section 771(10) of the Act.

¹⁶ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁷ For a discussion of the domestic like product analysis, *see* Countervailing Duty Investigation Initiation Checklist: Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China (China CVD Initiation Checklist) at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions).

⁷ See General Issues and China CVD Response.

⁸ See Phone Memorandum.

⁹ See Petitioner Scope Revision.

¹⁰ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

¹¹ See 19 CFR 351.102(b)(21) (defining “factual information”).

¹² See 19 CFR 351.303(b).

¹³ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011). See also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce’s electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

¹⁴ See Letter from Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, Enforcement and Compliance to the Embassy of China “Countervailing Duties on Imports of Sodium Gluconate, Gluconic Acid and Derivative Products from the People’s Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition,” dated December 8, 2017.

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix of this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2016.¹⁸ The petitioner states that there are no other known producers of sodium gluconate, gluconic acid, and derivative products in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.¹⁹

Our review of the data provided in the Petition, the supplemental responses, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.²⁰ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²¹ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²² Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²³ Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within

the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that Commerce initiate.²⁴

Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁵

The petitioner contends that the industry’s injured condition is illustrated by a significant volume of subject imports, reduced market share, underselling and price depression or suppression, lost sales and revenues, and a negative impact on financial performance.²⁶ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁷

Initiation of CVD Investigation

Based on the examination of the Petition, we find that it meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether

imports of GNA Products from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Numerous amendments to the AD and CVD laws were made pursuant to the Trade Preferences Extension Act of 2015.²⁸ The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.²⁹

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 44 of the 49 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 82 companies as producers/exporters of GNA Products in China.³⁰ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of GNA Products from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigation,” in the Appendix.

On December 11, 2017, Commerce released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested

Covering Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China and France). The checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS are also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

¹⁸ See Volume I of the Petition, at 3 and Exhibits I-1A and I-1B.

¹⁹ *Id.* at 3 and Exhibits I-1A and I-1B; *see also* General Issues and China CVD Response.

²⁰ See China CVD Initiation Checklist at Attachment II.

²¹ See section 702(c)(4)(D) of the Act; *see also* China CVD Initiation Checklist at Attachment II.

²² See China CVD Initiation Checklist at Attachment II.

²³ *Id.*

²⁴ *Id.*

²⁵ See Volume I of the Petition at 16 and Exhibit I-9; *see also* General Issues and China CVD Response.

²⁶ See Volume I of the Petition at 13, 16–32, and Exhibits I-4 and I-9 through I-22.

²⁷ See China CVD Initiation Checklist at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China and France).

²⁸ See Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015). *See also* Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

²⁹ See *Applicability Notice*, 80 FR at 46794–95.

³⁰ See China CVD Response at Revised Exhibit I–5.

parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.³¹ Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition has been provided to the GOC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of GNA Products from China are materially injuring, or threatening material injury to, a U.S. industry.³² A negative ITC determination will result in the investigation being terminated.³³ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

³¹ See Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office IV, Enforcement and Compliance to Robert Bolling, Program Manager, AD/CVD Operations, Office IV, Enforcement and Compliance "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated December 11, 2017.

³² See section 703(a)(2) of the Act.

³³ See section 703(a)(1) of the Act.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁴ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/>

³⁴ See 19 CFR 351.301(b).

³⁵ See 19 CFR 351.301(b)(2).

pkg/FR-2013-09-20/html/2013-22853.htm, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁶ Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated based on petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.³⁷ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: December 20, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers all grades of sodium gluconate, gluconic acid, liquid gluconate, and glucono delta lactone (GDL) (collectively GNA Products), regardless of physical form (including, but not limited to substrates; solutions; dry granular form or powders, regardless of particle size; or as a slurry). The scope also includes GNA Products that have been blended or are in solution with other

³⁶ See section 782(b) of the Act.

³⁷ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("Final Rule"); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

product(s) where the resulting mix contains 35 percent or more of sodium gluconate, gluconic acid, liquid gluconate, and/or GDL by dry weight.

Sodium gluconate has a molecular formula of $\text{NaC}_6\text{H}_{11}\text{O}_7$. Sodium gluconate has a Chemical Abstract Service (CAS) registry number of 527-07-1, and can also be called "sodium salt of gluconic acid" and/or sodium 2, 3, 4, 5, 6 pentahydroxyhexanoate. Gluconic acid has a molecular formula of $\text{C}_6\text{H}_{12}\text{O}_7$. Gluconic acid has a CAS registry number of 526-95-4, and can also be called 2, 3, 4, 5, 6 pentahydroxycaproic acid. Liquid gluconate is a blend consisting only of gluconic acid and sodium gluconate in an aqueous solution. Liquid gluconate has CAS registry numbers of 527-07-1, 526-95-4, and 7732-18-5, and can also be called 2, 3, 4, 5, 6-pentahydroxycaproic acid-hexanoate. GDL has a molecular formula of $\text{C}_6\text{H}_{10}\text{O}_6$. GDL has a CAS registry number of 90-80-2, and can also be called d-glucono-1,5-lactone.

The merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 2918.16.1000, 2918.16.5010, and 2932.20.5020. Merchandise covered by the scope may also enter under HTSUS subheadings 2918.16.5050, 3824.99.2890, and 3824.99.9295. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2017-28431 Filed 1-3-18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-818]

Certain Steel Nails From the Socialist Republic of Vietnam: Rescission of Antidumping Duty Administrative Review; 2016/2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain steel nails from the Socialist Republic of Vietnam, based on the timely withdrawal of all requests for review. The period of review (POR) is July 1, 2016, through June 30, 2017.

DATES: Applicable January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4475.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2017, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order¹ of certain steel nails from the Socialist Republic of Vietnam for the POR July 1, 2016, through June 30, 2017.² On July 31, 2017, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Commerce received a timely request for administrative review from Mid Continent Steel & Wire, Inc., the petitioner in this proceeding, covering the following producers or exporters: (1) Apex Holding Group Limited, (2) B.A.T. Logistics, (3) BAC AU Logistics Service and Trading, (4) C.H. Robinson, (5) CS Song Thuy, (6) FGS Logistics Co. Ltd., (7) Hecny Shipping Ltd., (8) Honour Lane Shipping Ltd., (9) M&T Export Trading Production, (10) Master International Logistics, (11) Orient Express Container Co., Ltd., (12) Rich State Inc., (13) Sanco Freight, (14) Seahorse Shipping Corporation, (15) Thao Cuong Co., Ltd., (16) Toan Nhat Viet Trading and Service, (17) Transworld Transportation Co., Ltd., (18) Truong Vinh Ltd., and (19) United Nail Products Co. Ltd.³ No other parties requested an administrative review.

Pursuant to Mid Continent Steel & Wire, Inc.'s review request and in accordance with 19 CFR 351.221(c)(1)(i), on September 13, 2017, Commerce published in the **Federal Register** a notice of initiation of an administrative review covering each of the nineteen producers or exporters named by Mid Continent Steel & Wire, Inc. in its July 31, 2017 review request.⁴ On September 28, 2017, Mid Continent Steel & Wire, Inc. timely withdrew its administrative review request for each of the nineteen companies specified in its July 31, 2017 request.⁵

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 30833 (July 3, 2017).

³ See Mid Continent Steel & Wire, Inc. letter, "Certain Steel Nails from Vietnam: Request for Administrative Reviews," dated July 31, 2017.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 13, 2017).

⁵ See Mid Continent Steel & Wire, Inc. letter, "Certain Steel Nails from Vietnam: Withdrawal of Request for Administrative Reviews" dated September 28, 2017.

administrative review, in whole or in part, if the party, or parties, that requested a review withdraws the request/s within 90 days of the publication of the notice of initiation of the requested review. As noted above, Mid Continent Steel & Wire, Inc. withdrew its request for review by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, in response to the timely withdrawal of the request for review, and in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 28, 2017.
Christian Marsh,
Deputy Assistant Secretary for Enforcement and Compliance.
[FR Doc. 2017–28479 Filed 1–3–18; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE
International Trade Administration
[A–570–051]

Certain Hardwood Plywood Products From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on certain hardwood plywood products (hardwood plywood) from the People’s Republic of China (China). We are also amending our *Final Determination* to correct ministerial errors with respect to the identification of companies receiving a separate rate.

DATES: Applicable January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Amanda Brings or Ryan Mullen, AD/CVD Operations, Office V, Enforcement

and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3927 or (202) 482–5260, respectively.

Period of Investigation

The period of investigation (POI) is April 1, 2016, through September 30, 2016.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 2017, Commerce published in the **Federal Register** the *Final Determination* that hardwood plywood from China is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).¹ From November 16, 2017, to November 27, 2017, Cosco Star International Co., Ltd. and Highland Industries Inc. (Cosco and Highland), Linyi Chengen Import and Export Co., Ltd. (Chengen), and the Coalition for Fair Trade in Hardwood Plywood and its individual members (collectively, the petitioners) submitted ministerial error allegations and rebuttal comments concerning the *Final Determination*.² On December 8, 2017, Commerce issued its findings related to the ministerial error allegations.³ On December 20, 2017, the ITC notified Commerce of its final affirmative determination that an industry in the

United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of hardwood plywood from China.⁴ The ITC also notified Commerce of its determination that critical circumstances do not exist with respect to imports of hardwood plywood from China subject to Commerce’s final affirmative critical circumstances finding.

Scope of the Order

For a complete description of the scope of the order, *see* the Appendix to this notice.

Amendment to Final Determination

Consistent with Commerce’s December 8, 2017, findings regarding the interested parties’ ministerial error allegations, and pursuant to section 735(e) of the Act and 19 CFR 351.224(e) and (f), Commerce is amending the *Final Determination* to reflect the correction of ministerial errors it made in spelling the name of Cosco’s producer, Feixian Xingying Wood Co., Ltd (Feixian), and Highland’s producer, Weifang Hanlin Timber Products Co., Ltd. (Weifang), on the exporter/producer list for separate rate recipients.⁵

As a result of this amended final determination, we have corrected the spelling of Feixian and Weifang on the exporter/producer list as follows:

Exporter	Producer	Weighted-average dumping margin (percent)	Cash deposit rate (percent)
Highland Industries Inc	Weifang Hanlin Timber Products Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Feixian Xingying Wood Co., Ltd	183.36	171.55

Antidumping Duty Order

In accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured, within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of imports of hardwood plywood

¹ See *Certain Hardwood Plywood Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017) (*Final Determination*).

² See Cosco and Highland’s Letter, “Hardwood Plywood Products from the People’s Republic of China: Ministerial Error Comments on Final Determination,” dated November 16, 2017 (Cosco and Highland Ministerial Error Comments); Chengen’s Letter, “Hardwood Plywood Products

from China. The ITC also notified Commerce of its determination that critical circumstances do not exist with respect to imports of hardwood plywood from China subject to Commerce’s final affirmative critical circumstances finding. Therefore, in accordance with section 735(c)(2) of the Act, we are publishing this antidumping

from the People’s Republic of China: Allegation of Ministerial Errors in Final Determination,” dated November 20, 2017 (Chengen Ministerial Error Comments); and Petitioners’ Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Response to Ministerial Error Submission,” dated November 27, 2017 (Petitioners’ Rebuttal Ministerial Error Comments).

³ See Memorandum, “Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Allegations of Ministerial Errors in the Final

duty order. Because the ITC determined that imports of hardwood plywood from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Determination,” dated December 8, 2017 (Ministerial Error Memorandum).

⁴ See Letter to Gary Taverman, Acting Assistant Secretary of Commerce for Enforcement and Compliance, from Rhonda K. Schmidtlein, Chairman of the U.S. International Trade Commission, regarding certain hardwood plywood products from the People’s Republic of China (December 20, 2017) (ITC Letter).

⁵ For a detailed discussion of Commerce’s ministerial error findings, *see* Ministerial Error Memorandum.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of hardwood plywood from China. Antidumping duties will be assessed on unliquidated entries of hardwood plywood from China entered, or withdrawn from warehouse, for consumption on or after June 23, 2017, the date of publication of the *Preliminary Determination*,⁶ but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of hardwood plywood from China. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits at rates equal to the estimated weighted-average dumping margins indicated in the chart below, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through.⁷ Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally

deposit estimated duties on this subject merchandise, a cash deposit at the rates listed below.⁸ The rate for the China-wide entity applies to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from China will be adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from China.⁹

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of the exporters that account for a significant proportion of exports of hardwood plywood from China, we extended the four-month period to six months in this case.¹⁰ In the underlying investigation, Commerce published the *Preliminary Determination* on June 23, 2017.¹¹ Therefore, the extended period beginning on the date of publication of the *Preliminary Determination*, ended December 19, 2017. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we

will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of hardwood plywood from China entered, or withdrawn from warehouse, for consumption on or after December 19, 2017, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

In its final determination, the ITC did not make an affirmative critical circumstances finding with respect to imports of subject merchandise from China that were subject to Commerce's final affirmative critical circumstances determination. Accordingly, Commerce will instruct CBP to lift suspension and to refund any cash deposit made to secure the payment of estimated antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after March 25, 2017 (*i.e.*, 90 days prior to the date of publication of the preliminary determination), but before June 23, 2017, the publication date of the *Preliminary Determination*.

Estimated Weighted-Average Dumping Margin

The weighted-average antidumping duty margin percentages and cash deposit percentages are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Linyi Chengen Import and Export Co., Ltd	Linyi Dongfangjuxin Wood Co., Ltd	183.36	171.55
Anhui Hoda Wood Co., Ltd	Feixian Jianxin Board Factory	183.36	171.55
Anhui Hoda Wood Co., Ltd	Linyi Xicheng Wood Co., Ltd	183.36	171.55
Anhui Hoda Wood Co., Ltd	Linyi Longxin Wood Co., Ltd	183.36	171.55
Anhui Hoda Wood Co., Ltd	Fengxian Jihe Wood Co., Ltd	183.36	171.55
Anhui Hoda Wood Co., Ltd	Xuzhou Chunyiyang Wood Co., Ltd	183.36	171.55
Anhui Hoda Wood Co., Ltd	Linyi Lanshan District Xiangfeng Decorative Board Factory	183.36	171.55
Anhui Hoda Wood Co., Ltd	Linyi Lanshan District Fubai Wood Board Factory	183.36	171.55
Anhui Hoda Wood Co., Ltd	Shandong Jubang Wood Co., Ltd	183.36	171.55
Anhui Hoda Wood Co., Ltd	Feixian Shangye Town Mingda Multi-layered Board Factory	183.36	171.55
Anhui Hoda Wood Co., Ltd	Xuzhou Dayuan Wood Co., Ltd	183.36	171.55

⁶ See *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

⁷ No party in the less-than-fair-value investigation established eligibility for an adjustment for estimated domestic subsidy pass-through. See *Preliminary Determination*, unchanged in *Final Determination*.

⁸ See section 736(a)(3) of the Act.

⁹ See *Final Determination*.

¹⁰ See *Certain Hardwood Plywood Products from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value Investigation*, 82 FR 29827 (June 30, 2017).

¹¹ See *Preliminary Determination*.

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Anhui Hoda Wood Co., Ltd	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Anhui Hoda Wood Co., Ltd	Linyi Renlin Wood Co., Ltd	183.36	171.55
Celtic Co., Ltd	Linyi Celtic Wood Co., Ltd	183.36	171.55
Celtic Co., Ltd	Pinyi Fuhua Wood Co., Ltd	183.36	171.55
China Friend Limited	Feixian Wanda Wood Factory	183.36	171.55
China Friend Limited	Shandong Huaxin Jiasheng Wood Co., Ltd	183.36	171.55
China Friend Limited	Feixian Xinhe Wood Co., Ltd	183.36	171.55
China Friend Limited	Shandong Dongfang Bayley Wood Co., Ltd	183.36	171.55
China Friend Limited	Xuzhou Yujinfang Wood Co., Ltd	183.36	171.55
China Friend Limited	Linyi Huifeng Wood Industry Co., Ltd	183.36	171.55
China Friend Limited	Linyi Dongfangjuxin Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Linyi Huasheng Yongbin Wood Corp	183.36	171.55
Cosco Star International Co., Ltd	Suining Pengxiang Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Pizhou Jiangshan Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Shandong Union Wood Co. Ltd	183.36	171.55
Cosco Star International Co., Ltd	Linyi Sanfortune Wood Co. Ltd	183.36	171.55
Cosco Star International Co., Ltd	Shandong Anxin Timber Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Linyi Evergreen Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Shandong Huaxin Jiasheng Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Xuzhou Shenghe Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Pingyi Jinniu Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Linyi Celtic Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Linyi Laiyi Timber Industry Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Feixian Hongqiang Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Feixian Xingying Wood Co., Ltd	183.36	171.55
Cosco Star International Co., Ltd	Linyi City Lanshan District Fubo Wood Factory	183.36	171.55
Deqing China-Africa Foreign Trade Port Co., Ltd	Suqian Welcomewood Products Co., Ltd	183.36	171.55
Deqing China-Africa Foreign Trade Port Co., Ltd	Feixian Hongqiang Wooden Products Co., Ltd	183.36	171.55
Feixian Jinde Wood Factory	Feixian Jinde Wood Factory	183.36	171.55
Feixian Longteng Wood Co., Ltd	Feixian Longteng Wood Co., Ltd	183.36	171.55
Golder International Trade Co., Ltd	Fengxian Shuangxingyuan Wood Co., Ltd	183.36	171.55
Golder International Trade Co., Ltd	Fengxian Fangyuan Wood Co., Ltd	183.36	171.55
Golder International Trade Co., Ltd	Pizhou Jinuoyuan Wood Co., Ltd	183.36	171.55
Golder International Trade Co., Ltd	Xuzhou Changcheng Wood Co., Ltd	183.36	171.55
Golder International Trade Co., Ltd	Xuzhou Jiamei Wood Co., Ltd	183.36	171.55
G.D. Enterprise Limited	International Wood Products (Kunshan) Co., Ltd	183.36	171.55
Happy Wood Industrial Group Co., Ltd	Happy Wood Industrial Group Co., Ltd	183.36	171.55
Henan Hongda Woodcraft Industry Co., Ltd	Henan Hongda Woodcraft Industry Co., Ltd	183.36	171.55
Highland Industries Inc	Weifang Hanlin Timber Products Co., Ltd	183.36	171.55
Highland Industries Inc	Anqiu Hengrui Wood Co., Ltd	183.36	171.55
Highland Industries Inc	Weifang Chenglin Wood Industry Co., Ltd	183.36	171.55
Huainan Mengping Import and Export Co., Ltd	Linyi Qianfeng Panel Factory Co., Ltd	183.36	171.55
Jiangsu High Hope Arser Co., Ltd	Shandong Dongfang Bayley Wood Co., Ltd	183.36	171.55
Jiangsu High Hope Arser Co., Ltd	Xuzhou Zhongtong Wood Co., Ltd	183.36	171.55
Jiangsu High Hope Arser Co., Ltd	Pizhou Arser Wood Co., Ltd	183.36	171.55
Jiangsu High Hope Arser Co., Ltd	Linyi Jinghai Wood Products Factory	183.36	171.55
Jiangsu Qianjiuren International Trading Co., Ltd	Jiangsu Shuren Wood Co., Ltd	183.36	171.55
Jiangsu Shengyang Industrial Joint Stock Co., Ltd	Jiangsu Shengyang Industrial Joint Stock Co., Ltd	183.36	171.55
Jiangsu Top Point International Co., Ltd	Linyi Jinkun Wood Co., Ltd	183.36	171.55
Jiangsu Top Point International Co., Ltd	Feixian Huafeng Wood Co., Ltd	183.36	171.55
Jiangsu Top Point International Co., Ltd	Feixian Xindongfang Wood Co., Ltd	183.36	171.55
Jiangsu Top Point International Co., Ltd	Feixian Fuyang Plywood Factory	183.36	171.55
Jiangsu Top Point International Co., Ltd	Fengxian Shuangxingyuan Wood Co., Ltd	183.36	171.55
Jiangsu Top Point International Co., Ltd	Linyi Celtic Wood Co., Ltd	183.36	171.55
Jiashan Dalin Wood Industry Co., Ltd	Jiashan Dalin Wood Industry Co., Ltd	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Fengxian Hengyuan Wood Industry Co., Ltd	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Junyang Wood Industry Co., Ltd	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Junbang Wood Factory	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Linyi City Lanshan District Mingda Wood Factory	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Hongyun Wood Factory	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Linyi City Lanshan District Xiangfeng Wood Decoration Factory	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Shandong Jubang Wood Co., Ltd	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Yixin Wood Processing Factory	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Pizhou Wantai Wood Industry Co., Ltd	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Fengxiang Wood Processing Factory	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Shandong Compete Wood Co., Ltd	183.36	171.55
Jiaxing Gsun Imp. & Exp. Co., Ltd	Linyi Kunyu Plywood Factory	183.36	171.55
Jiaxing Hengtong Wood Co., Ltd	Jiaxing Hengtong Wood Co., Ltd	183.36	171.55
Jiaxing Kaochuan Woodwork Co., Ltd	Jiaxing Kaochuan Woodwork Co., Ltd	183.36	171.55

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Leadwood Industrial Corp	Leadwood Industrial Corp	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Xinyi Chaohua Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi Huasheng Yongbin Wood Corp	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Baoshan Wood Factory	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Pizhou Yuanxing Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi Celtic Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Fubo Wood Factory	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Fei County Hongsheng Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Xuzhou Hongwei Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Feixian Wanda Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Fengxian Shuangxingyuan Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Feixian Hongqiang Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Fuerda Wood Factory	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Fengxian Hengyuan Wood Industry Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Feixian Xingying Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Shandong Jubang Wood Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Feixian Junyang Wood Industry Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Feixian Junbang Wood Factory	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Feixian Hongyun Wood Factory	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Xiangfeng Wood Decoration Factory	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi Renlin Wood Industry Co., Ltd	183.36	171.55
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Mingda Wood Factory	183.36	171.55
Linyi City Dongfang Fukai Wood Industry Co., Ltd	Linyi City Dongfang Fukai Wood Industry Co., Ltd	183.36	171.55
Linyi City Dongfang Jinxin Economic and Trade Co., Ltd	Linyi City Dongfang Jinxin Economic and Trade Co., Ltd	183.36	171.55
Linyi City Shenrui International Trade Co., Ltd	Linyi City Dongfang Fuchao Wood Co., Ltd	183.36	171.55
Linyi City Shenrui International Trade Co., Ltd	Feixian Zhenghua Wood Factory	183.36	171.55
Linyi Dahua Wood Co., Ltd	Linyi Dahua Wood Co., Ltd	183.36	171.55
Linyi Evergreen Wood Co., Ltd	Linyi Evergreen Wood Co., Ltd	183.36	171.55
Linyi Glary Plywood Co., Ltd	Linyi Glary Plywood Co., Ltd	183.36	171.55
Linyi Hengsheng Wood Industry Co., Ltd	Linyi Hengsheng Wood Industry Co., Ltd	183.36	171.55
Linyi Huasheng Yongbin Wood Co., Ltd	Linyi Huasheng Yongbin Wood Co., Ltd	183.36	171.55
Linyi Jiahe Wood Industry Co., Ltd	Linyi Jiahe Wood Industry Co., Ltd	183.36	171.55
Linyi Linhai Wood Co., Ltd	Linyi Linhai Wood Co., Ltd	183.36	171.55
Linyi Mingzhu Wood Co., Ltd	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Linyi Sanfortune Wood Co., Ltd	Linyi Sanfortune Wood Co., Ltd	183.36	171.55
Linyi Tian He Wooden Industry Co., Ltd	Linyi Tian He Wooden Industry Co., Ltd	183.36	171.55
Pingyi Jinniu Wood Co., Ltd	Pingyi Jinniu Wood Co., Ltd	183.36	171.55
Pizhou Dayun Import & Export Trade Co., Ltd	Xuzhou Camry Wood Co., Ltd	183.36	171.55
Pizhou Jin Sheng Yuan International Trade Co., Ltd ..	Xuzhou Chengxin Wood Co., Ltd	183.36	171.55
Pizhou Jin Sheng Yuan International Trade Co., Ltd ..	Xuzhou Golden River Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Linyi Fubo Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Linyi Tuopu Zhixin Wooden Industry Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Linyi Haisen Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Linyi Jubang Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Changcheng Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Jinguoyuan Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Xuexin Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Anhui Fuyang Qinglin Wood Products Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Anhui Huijin Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Anhui Lingfeng Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Pizhou Zhongxin Wood Co., Ltd	183.36	171.55
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Spring Art Yang Wood Industry Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Dahua Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Yutai Zezhong Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Evergreen Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Shandong Dongfang Bayley Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Feixian Tanyi Youchengjiafu Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Feixian Mingteng Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Dahua Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Yutai Zezhong Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Qianfeng Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Shandong Jingqi Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Laite Plywood Factory	183.36	171.55
Qingdao Top P&Q International Corp	Xuzhou Chunyiyang Wood Products Co. Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Feixian Lijun Wood Products Co., Ltd	183.36	171.55

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Qingdao Top P&Q International Corp	Feixian Shuangfeng Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Longxin Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Lanshan Wanmei Wood Factory	183.36	171.55
Qingdao Top P&Q International Corp	Feixian Xinhe Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Chenyuan Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Di Birch Wood Industry Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Shandong Junxing Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Jiexin Wood Products Factory	183.36	171.55
Qingdao Top P&Q International Corp	Xuzhou Fuyu Wood Industry Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Jiangsu Lishun Industry And Trade Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Evergreen Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Anhui Qinglin Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Haisen Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Hongze Plywood Factory	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Kaifeng Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Feixian Fugang Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Lanling Longziyun Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Fuerda Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Fengxian Shuangxingyuan Wood Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Feixian Dexin Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Shandong Dongfang Bayley Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Linyi Huifeng Wood Products Co., Ltd	183.36	171.55
Qingdao Top P&Q International Corp	Feixian Kailin Wood Products Co., Ltd	183.36	171.55
Shandong Anxin Timber Co., Ltd	Shandong Anxin Timber Co., Ltd	183.36	171.55
Shandong Huaxin Jiasheng Wood Co., Ltd	Shandong Huaxin Jiasheng Wood Co., Ltd	183.36	171.55
Shandong Huiyu International Trade Co., Ltd	Linyi Huifeng Wood Products Co., Ltd	183.36	171.55
Shandong Jinluda International Trade Co., Ltd	Shandong Union Wood Co., Ltd	183.36	171.55
Shandong Jinluda International Trade Co., Ltd	Shandong Jinjiu Wood Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Fengxian Hengyuan Wood Industry Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Feixian Junyang Wood Industry Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Feixian Junbang Wood Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Linyi City Lanshan District Mingda Wood Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Feixian Hongyun Wood Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Linyi City Lanshan District Xiangfeng Wood Decoration Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Linyi Lanshan Yulin Wood Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Shandong Jubang Wood Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Feixian Yixin Wood Processing Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Linyi Renlin Wood Industry Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Xuzhou Dayuan Wood Industry Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Xuzhou Yuntai Wood Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Pizhou Wantai Wood Industry Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Feixian Desheng Wood Industry Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Xuzhou Zhongcai Wood Industry Co., Ltd	183.36	171.55
Shandong Johnson Trading Co., Ltd	Feixian Fengxiang Wood Processing Factory	183.36	171.55
Shandong Johnson Trading Co., Ltd	Shandong Compete Wood Co., Ltd	183.36	171.55
Shandong Qishan International Trading Co., Ltd	Linyi Tuopu Zhixin Wooden Industry Co., Ltd	183.36	171.55
Shandong Senmanqi Import & Export Co., Ltd	Shandong Jinjiu Wood Co., Ltd	183.36	171.55
Shandong Shengdi International Trading Co., Ltd	Qufu Shengda Wood Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Jinghua Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Lianbang Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Huada Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Laite Board Factory	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Yuqiao Board Factory	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Feixian Huafeng Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Xuzhou Shuangxingyuan Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Youcheng Jiafu Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Lanshan Jinhao Board Factory	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Siyang Dazhong Wood Product Factory	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Binzhou Yongsheng Artificial Board Industrial Trade Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Senpeng Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Dangshan County Weidi Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Yutai County Zezhong Wood Industry Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Huasheng Yongbin Wood Co., Ltd	183.36	171.55
Shanghai Brightwood Trading Co., Ltd	Linyi Hengan Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Jinghua Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Lianbang Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Huada Wood Industry Co., Ltd	183.36	171.55

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Shanghai Futuwood Trading Co., Ltd	Linyi Jinkun Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Yuqiao Board Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Laite Board Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Tuopu Zhixin Wooden Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Feixian Huafeng Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Xuzhou Shuangxingyuan Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Youcheng Jiafu Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Shandong Qingyuan Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Lanshan Jinhao Board Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Lanshan Fubai Wood Industry Board Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Siyang Dazhong Wood Product Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Binzhou Yongsheng Artificial Board Industrial Trade Co., Ltd.	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Shandong Jinjiu Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Senpeng Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Xuzhou Heng'an Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Dangshan Weidi Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Fengxian Jihe Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Yutai Zezhong Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Huasheng Yongbin Wood Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Kaifeng Wood Board Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Mingda Wood Industry Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Yangxin County Xintong Decorative Materials Co., Ltd	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Pingyi County Zhongli Wood Products Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Pingyi County Yuxin Board Factory	183.36	171.55
Shanghai Futuwood Trading Co., Ltd	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Shanghai Luli Trading Co., Ltd	Feixian Wanda Wood Factory	183.36	171.55
Shanghai Luli Trading Co., Ltd	Shandong Huaxin Jiasheng Wood Co., Ltd	183.36	171.55
Shanghai Luli Trading Co., Ltd	Feixian Xinhe Wood Co., Ltd	183.36	171.55
Shanghai Luli Trading Co., Ltd	Xuzhou Yujinfang Wood Co., Ltd	183.36	171.55
Shanghai Luli Trading Co., Ltd	Linyi Hui Feng Wood Industry Co., Ltd	183.36	171.55
Shanghai S&M Trade Co., Ltd	LinYi Celtic Wood Co., Ltd	183.36	171.55
Shanghai S&M Trade Co., Ltd	Linyi Lanshan District Jinhao Wood Factory	183.36	171.55
Shanghai S&M Trade Co., Ltd	Jiangsu Shuren Wood Industry Co., Ltd	183.36	171.55
Shanghai S&M Trade Co., Ltd	Jiangsu Sending Wood Industry Co., Ltd	183.36	171.55
Smart Gift International	LinYi Celtic Wood Co., Ltd	183.36	171.55
Smart Gift International	Linyi Lanshan District Jinhao Wood Factory	183.36	171.55
Smart Gift International	Jiangsu Shuren Wood Industry Co., Ltd	183.36	171.55
Smart Gift International	Jiangsu Sending Wood Industry Co., Ltd	183.36	171.55
Suining Pengxiang Wood Co., Ltd	Suining Pengxiang Wood Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Suqian Huilin Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Shandong Junxing Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Linyi Longxin Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Linyi Xicheng Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Feixian County Mingda Multilayered Board Factory	183.36	171.55
Sumec International Technology Co., Ltd	Linyi Celtic Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Shandong Haote Decorative Materials Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Linyi City Lanshan District Linyu Board Factory	183.36	171.55
Sumec International Technology Co., Ltd	Linyi City Lanshan District Xiangfeng Decorative Board Factory.	183.36	171.55
Sumec International Technology Co., Ltd	Linyi City Baoshan Board Factory	183.36	171.55
Sumec International Technology Co., Ltd	Feixian Xingying Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Fengxian Jihe Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Xuzhou Jiangshan Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Xuzhou Senyuan Wood Products Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Xuzhou Jinguoyuan Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Xuzhou Chunjiyang Wood Industry Co., Ltd	183.36	171.55
Sumec International Technology Co., Ltd	Zibo Sumaida Wood Industry Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Xuzhou Henglin Wood Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Qufu Shengda Wood Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Pizhou Xuexin Wood Products Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Pizhou Jiangshan Wood Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Shandong Union Wood Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Linyi City Lanshan District Fubo Wood Factory	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Linyi Jiahe Wood Industry Co., Ltd	183.36	171.55
Suqian Hopeway International Trade Co., Ltd	Linyi Dahua Wood Co., Ltd	183.36	171.55
Suqian Yaorun Trade Co., Ltd	Pizhou Jiangshan Wood Co., Ltd	183.36	171.55
Suqian Yaorun Trade Co., Ltd	Suqian Bairun Wood Co., Ltd	183.36	171.55

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Suzhou Dongsheng Wood Co., Ltd	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Xuzhou Henglin Wood Co., Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Qufu Shengda Wood Co., Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Pizhou Xuexin Wood Products Co., Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Pizhou Jiangshan Wood Co. Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Shandong Union Wood Co. Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Linyi City Lanshan District Fubo Wood Factory	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Linyi Jiahe Wood Industry Co., Ltd	183.36	171.55
Suzhou Fengshuwan Import and Exports Trade Co., Ltd.	Linyi Dahua Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Tiancai Timber Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Lingyi Huasheng Yongbin Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Xicheng Wood Products Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Longxin Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Oriental Fuchao Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Qianfeng Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Feixian Wanda Wood Factory	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Shandong Union Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Shandong Jingjiu Wood Corporation	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Yinhe Machinery Chemical Limited Company of Shandong Province.	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi City Yongsan Wood Corp	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Xuzhou Changcheng Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Pizhou Fushen Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Pizhou Yuanxing Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Xuzhou Yuantai Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Xuzhou Hongfu Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Feng County Shuangxingyuan Wood	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Anhui Fuyang Qinglin Wood Products Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Dahua Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Juxian Dechang Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Feixian Jinhao Wood Board Plant	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Siyang Dahua Plywood Plant	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Lanshan District Fubo Woods Factory	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Xuzhou Deheng Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Kaifeng Wood Board Factory	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Zhenyuan Wood Products Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Xuzhou Weilin Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Tianlu Wood Board Factory	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Baoshan Board Factory	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Xinyi Chaohua Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Pizhou Jinguoyuan Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Feng County Jihe Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Dangshan County Weidi Wood Co., Ltd	183.36	171.55
Suzhou Oriental Dragon Import and Export Co., Ltd ...	Zhucheng Runheng Industrial and Trading Co., Ltd ...	183.36	171.55
Xuzhou Amish Import & Export Trade Co., Ltd	Xuzhou Amish Import & Export Trade Co., Ltd	183.36	171.55
Xuzhou Andefu Wood Co., Ltd	Fengxian Fangyuan Wood Co., Ltd	183.36	171.55
Xuzhou Baoqi Wood Product Co., Ltd	Linyi Jinghai Board Plant	183.36	171.55
Xuzhou Baoqi Wood Product Co., Ltd	Linyi Lanshan Yulin Board Plant	183.36	171.55
Xuzhou Dilun Wood Co. Ltd	Xuzhou Dilun Wood Co. Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Changcheng Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Feixian Jinde Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Fengxian Fangyuan Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Xuzhou City Hengde Wood Products Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Pizhou Jiangshan Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Huasheng Yongbin Wood Corp	183.36	171.55

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Xuzhou DNT Commercial Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Renlin Wood Industry Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Binzhou Yongsheng Artificial Board Industrial & Training Co., Ltd.	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Xuzhou Zhongcai Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Anhui Xinyuanda Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Shandong Lianbang Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Xinrui Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Shandong Huashi Lvyuan Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Xuzhou Fuyu Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Dazhong Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Shandong Junxing Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi City Lanshan District Linyu Plywood Factory	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi City Dongfang Fuchao Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Dahua Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Linyi Qianfeng Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Xuzhou Zhongtong Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Shandong Oufan Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Shandong Jubang Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Xuzhou Changcheng Wood Products Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Feixian Jinhao Wood Board Plant	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Feixian Huafeng Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Dhanshan County Weidi Wood Co., Ltd	183.36	171.55
Xuzhou DNT Commercial Co., Ltd	Xuzhou Hongmei Wood Development Co., Ltd	183.36	171.55
Xuzhou Eastern Huatai International Trading Co., Ltd	Xuzhou Well-Done Wood Co., Ltd	183.36	171.55
Xuzhou Eastern Huatai International Trading Co., Ltd	Linyi Longxin Wood Co., Ltd	183.36	171.55
Xuzhou Eastern Huatai International Trading Co., Ltd	Linyi Xicheng Wood Co., Ltd	183.36	171.55
Xuzhou Eastern Huatai International Trading Co., Ltd	Xuzhou Hongfu Wood Co., Ltd	183.36	171.55
Xuzhou Eastern Huatai International Trading Co., Ltd	Oufan Wooden Products Shandong Co., Ltd	183.36	171.55
Xuzhou Eastern Huatai International Trading Co., Ltd	Dangshan Weidi Wood Co., Ltd	183.36	171.55
Xuzhou Eastern Huatai International Trading Co., Ltd	Xu Zhou Chang Cheng Wood Co., Ltd	183.36	171.55
Xuzhou Hansun Import & Export Co. Ltd	Xu Zhou Zhongyuan Wood Co., Ltd	183.36	171.55
Xuzhou Jiangheng Wood Products Co., Ltd	Xuzhou Jiangheng Wood Products Co., Ltd	183.36	171.55
Xuzhou Jiangyang Wood Industries Co., Ltd	Xuzhou Jiangyang Wood Industries Co., Ltd	183.36	171.55
Xuzhou Longyuan Wood Industry Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd	183.36	171.55
Xuzhou Maker's Mark Building Materials Co., Ltd	Xuzhou Qinglin Wood Co., Ltd	183.36	171.55
Xuzhou Maker's Mark Building Materials Co., Ltd	Xuzhou Maomei Wood Co., Ltd	183.36	171.55
Xuzhou Maker's Mark Building Materials Co., Ltd	Suzhou Jiakaide Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Changcheng Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Feixian Jinde Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Suzhou Dongsheng Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Fengxian Fangyuan Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou City Hengde Wood Products Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Pizhou Jiangshan Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Huasheng Yongbin Wood Corp	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Renlin Wood Industry Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Binzhou Yongsheng Artificial Board Industrial & Training Co., Ltd.	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Zhongcai Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Anhui Xinyuanda Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Shandong Lianbang Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Xinrui Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Shandong Huashi Lvyuan Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Fuyu Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Dazhong Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Shandong Junxing Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi City Lanshan District Linyu Plywood Factory	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi City Dongfang Fuchao Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Dahua Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Linyi Qianfeng Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Zhongtong Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Shandong Oufan Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Shandong Jubang Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Changcheng Wood Products Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Feixian Jinhao Wood Board Plant	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Feixian Huafeng Wood Co., Ltd	183.36	171.55

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Xuzhou Pinlin International Trade Co., Ltd	Dhanshan County Weidi Wood Co., Ltd	183.36	171.55
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Hongmei Wood Development Co., Ltd	183.36	171.55
Xuzhou Shenghe Wood Co. Ltd	Xuzhou Shenghe Wood Co. Ltd	183.36	171.55
Xuzhou Shengping Imp and Exp Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd	183.36	171.55
Xuzhou Shuiwangxing Trading Co., Ltd	Fengxian Jihe Wood Industry Co. Ltd	183.36	171.55
Xuzhou Shuner Import & Export Trade Co. Ltd	Pizhou Fushen Wood Co. Ltd	183.36	171.55
Xuzhou Tianshan Wood Co., Ltd	Xuzhou Tianshan Wood Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Xuzhou Jiangheng Wood Products Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Xuzhou Jiangyang Wood Industries Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Xuzhou Changcheng Wood Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Fengxian Shuangxingyuan Wood Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Linyi Mingzhu Wood Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Linyi City Lanshan District Daqian Wood Board Factory.	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Feixian Hongsheng Wood Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Xuzhou Hongwei Wood Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Linyi Qianfeng Wood Factory	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Linyi Renlin Wood Industry Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Xuzhou Senyuan Wood Products Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Jiangsu Lishun Industrial and Trading Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Pizhou Xuexin Wood Industry Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Feixian Hongjing Board Factory	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Xuzhou Jiaqiang Wood Industry Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Shandong Shelter Forest Products Co., Ltd	183.36	171.55
Xuzhou Timber International Trade Co., Ltd	Jiangsu Binsong Wood Co., Ltd	183.36	171.55
Yangzhou Hanov International Co., Ltd	Linyi Longxin Wood Co., Ltd	183.36	171.55
Yishui Zelin Wood Made Co., Ltd	Yishui Zelin Wood Made Co., Ltd	183.36	171.55
Zhejiang Dehua TB Import & Export Co., Ltd	Dehua TB New Decoration Material Co., Ltd	183.36	171.55
Zhejiang Dehua TB Import & Export Co., Ltd	Zhangjiagang Jiuli Wood Co., Ltd	183.36	171.55
China-Wide Entity	183.36	

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to hardwood plywood from China pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at <http://enforcement.trade.gov/enforcement>.

This order and amended final determination are published in accordance with sections 735(e), 736(a) and 777(i) of the Act, and 19 CFR 351.211 and 351.224(e).

Dated: December 28, 2017.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise subject to this investigation is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-

coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of this investigation a “veneer” is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: Ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes;

paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film.

Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

The scope of the investigation excludes the following items: (1) Structural plywood (also known as “industrial plywood” or “industrial panels”) that is manufactured to

meet U.S. Products Standard PS 1–09, PS 2–09, or PS 2–10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration. See Multilayered Wood Flooring from the People's Republic of China, 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and Multilayered Wood Flooring from the People's Republic of China, 76 FR 76693 (December 8, 2011) (countervailing duty order), as amended by Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as “solid bamboo”); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an “Exterior” or “Exposure 1” bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of this investigation are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this investigation is “ready to assemble” (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of furniture, (2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and (3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a

single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of this investigation are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this investigation are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, (2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and (3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of this investigation are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of this investigation are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of this investigation are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141;

4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2017–28482 Filed 1–3–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing the countervailing duty order on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China).

DATES: Applicable January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Justin Neuman at (202) 482–0486, or Matthew Renkey at (202) 482–2312, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (Act), on November 16, 2017, Commerce published its affirmative final determination that countervailable subsidies are being provided to producers and exporters of hardwood plywood from China.¹ On December 20, 2017, the ITC notified Commerce of its affirmative determination that an industry in the United States is materially injured within the meaning

¹ See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017).

of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of subject merchandise from China.²

Scope of the Order

The scope of this order covers hardwood plywood from China. For a complete description of the scope, see the Appendix to this notice.

Countervailing Duty Order

On December 20, 2017, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of hardwood plywood from China.³ Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing this countervailing duty order.

Because the ITC determined that imports of hardwood plywood from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of hardwood plywood from China. Countervailing duties will be assessed on unliquidated entries of hardwood plywood from China entered, or withdrawn from warehouse, for consumption on or after April 25, 2017, the date of publication of the *Preliminary Determination*,⁴ but will not include entries occurring after

the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of hardwood plywood from China. We will also instruct CBP to require, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers and exporters of subject merchandise.

Company	Subsidy rate (percent)
Shandong Dongfang Bayley Wood Co., Ltd ⁵	194.90
Linyi Sanfortune Wood Co., Ltd	22.98
All-Others	22.98
Anji Qichen Bamboo Industry Co. Ltd ⁶	194.90
Deqing Shengqiang Wood Co., Ltd	194.90
Guangxi Sunway Cen.Xi Artificial Board Ltd	194.90
Guangxi Sunway Forest Products Industry Co., Ltd	194.90
Hebei Tongli Wood Co., Ltd	194.90
Heze Fulin Wood Products Co., Ltd	194.90
Jiashan Minghong Wood Industry Co., Ltd	194.90
Jiaxing Brilliant Import & Export Co., Ltd	194.90
Keens Products	194.90
King Sheng	194.90
Kunming Alston Ast Wood Products Co., Ltd	194.90
Langfang Baomujie Wood Co., Ltd	194.90
Larkcop International Co., Ltd	194.90
Linyi Cathay Pacific Wood Factory	194.90
Linyi Celtic Wood Co., Ltd	194.90
Linyi Dongri Plywood Co., Ltd	194.90
Linyi Hongma	194.90
Linyi Jinhua Wood Co., Ltd	194.90
Linyi Kai Yi Arts and Crafts Co., Ltd	194.90
Linyi Laiyi Timber Industry Co., Ltd	194.90
Linyi Lianyi Wood Co., Ltd	194.90
Linyi Raya Commerce	194.90
Linyi Yutai Wood Co., Ltd	194.90
Lishui Liancheng Pencil Manufacturing Co., Ltd	194.90
Mol Consolidation Service	194.90
Ningbo Asia Pulp and Paper	194.90
Ningbo Zhonghua Paper	194.90
Qiangsheng Wood Co., Ltd	194.90
Qingdao Liansheng International Trading	194.90
Qufu Shengda Wood Co., Ltd	194.90
Shandong Fengtai Wood Co., Ltd	194.90
Shandong Hongyang Fire Resistant	194.90
Shandong Xingang Group	194.90
Shanghai Sunshine Decorative Materials Co., Ltd	194.90
Shenghe Wood Company Ltd	194.90
Shouguang Evergreen Im & Ex Co. Ltd ⁷	194.90
Shouguang Taizhong Wood Co., Ltd	194.90
Siyang Jiayuan Woodindustry Co., Ltd	194.90
Siyang Senda Wood Industry Co., Ltd	194.90

² See Letter to Gary Taverman, Acting Assistant Secretary of Commerce for Enforcement and Compliance, from Rhonda K. Schmidlein, Chairman of the U.S. International Trade Commission, regarding certain hardwood plywood

products from the People's Republic of China (December 20, 2017) (ITC Letter).

³ See ITC Letter.

⁴ See *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary*

Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination, 82 FR 19022 (April 25, 2017).

Company	Subsidy rate (percent)
Suqian Bairun Wood Industry Co., Ltd	194.90
Suqian Foreign Trade Co., Ltd	194.90
Suqian Sulu Wood Industry Co., Ltd ⁸	194.90
Suzhou Dong He Wood Co., Ltd	194.90
Tianjin Canex	194.90
Tianjin Zhanye Metal Products Co., Ltd	194.90
Xuzhou Fuyuan Wood Co., Ltd	194.90
Xuzhou Hongwei Wood Co., Ltd	194.90
Xuzhou Ruilin Timber Co., Ltd	194.90
Xuzhou Shenghe Wood Products	194.90
Xuzhou Woodhi Trading Co. Ltd	194.90
Xuzhou Yishun Brightwood Co. Ltd	194.90
Xuzhou Zhongda Building Materials Co., Ltd	194.90
Xuzhou Zhongyuan Wood Co., Ltd	194.90
Yixing Lion-King Timber Industry Co., Ltd	194.90
Zhejiang Deqing Shengqiang Wood Co., Ltd	194.90
Zhejiang Fuerjia Wooden Company	194.90
Zhejiang Jufeng Wood Co., Ltd	194.90
Zhejiang Xinyuan Bamboo Products Co., Ltd	194.90
Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd	194.90

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on April 25, 2017. As such, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on August 23, 2017. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act and our practice, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of hardwood plywood from China entered, or withdrawn from warehouse, for consumption, on or after August 23, 2017, the date the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's

final determination in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to hardwood plywood from China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: December 28, 2017.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise subject to this investigation is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of this investigation a "veneer" is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: Ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

⁵ As discussed in the *Preliminary Determination*, Commerce found that Shandong Dongfang Bayley Wood Co., Ltd. (Bayley Wood) is cross-owned with Linyi Yinhe Panel Factory (Yinhe Panel), a producer of subject merchandise. Commerce is also applying Bayley Wood's rate to Yinhe Panel.

⁶ This company and those listed below are receiving the AFA rate because they did not respond to our quantity and value questionnaire.

⁷ This company was listed as having the following two "aka" names: Shouguang Evergreen Co., Ltd. and Weifang Evergreen Wood Co., Ltd.

⁸ This company was listed as having the following "aka" name: Suqian Sulu Import and Export Trading.

The scope of the investigation excludes the following items: (1) Structural plywood (also known as “industrial plywood” or “industrial panels”) that is manufactured to meet U.S. Products Standard PS 1–09, PS 2–09, or PS 2–10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People’s Republic of China, Import Administration, International Trade Administration. See Multilayered Wood Flooring from the People’s Republic of China, 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and Multilayered Wood Flooring from the People’s Republic of China, 76 FR 76693 (December 8, 2011) (countervailing duty order), as amended by Multilayered Wood Flooring from the People’s Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as “solid bamboo”); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an “Exterior” or “Exposure 1” bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

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hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of this investigation are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this investigation are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, (2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and (3) instructions providing guidance on the assembly of a finished unit of cabinetry.

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Excluded from the scope of this investigation are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235;

4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2017–28481 Filed 1–3–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–829, A–570–071]

Sodium Gluconate, Gluconic Acid, and Derivative Products From France and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable December 20, 2017.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey at (202) 482–0193 and Maliha Khan at (202) 482–0895 (France), Jeffrey Pedersen at (202) 482–2769 and Celeste Chen at (202) 482–0890 (the People’s Republic of China (China)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On November 30, 2017, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) Petitions concerning imports of sodium gluconate, gluconic acid, and derivative products (GNA products) from France and China, filed in proper form on behalf of PMP Fermentation Products, Inc. (PMP, the petitioner).¹ The AD Petitions were accompanied by a countervailing duty (CVD) petition concerning imports of GNA products

¹ See Petitioner’s letter, “Petition for Antidumping and Countervailing Duties: Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China and France,” dated November 30, 2017 (the Petitions).

from China. The petitioner is a domestic producer of GNA products.²

On December 5, 2017, Commerce requested supplemental information pertaining to certain areas of the Petitions.³ The petitioner filed responses to these requests on December 7, 2017.⁴ On December 15, 2017, the petitioner submitted certain revisions to the scope.⁵

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of GNA products from France and China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing GNA products in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting their allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act.

² See Volume I of the Petitions, at 2.

³ See Commerce's Letters, "Petitions for the Imposition of Antidumping Duties on Imports of Sodium Gluconate, Gluconic Acid, and Derivative Products from France and the People's Republic of China and Countervailing Duties on Imports of Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Supplemental Questions," (General Issues Supplemental Questionnaire); "Petition for the Imposition of Antidumping Duties on Imports of Sodium Gluconate, Gluconic Acid and Derivative Products from France: Supplemental Questions;" and "Petition for the Imposition of Antidumping Duties on Imports of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Supplemental Questions." All three of these documents are dated December 5, 2017.

⁴ See Petitioner's Letters, "Antidumping Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: PMP's Response to the Department's Supplemental Questions on the Petition" (General Issues and China AD Supplement) and "Antidumping Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from France: PMP's Response to the Department's Supplemental Questions on the Petition" (General Issues and France AD Supplement). Both of these documents are dated December 7, 2017.

⁵ See Memorandum, "Petitions for the Imposition of Antidumping Duties on Imports of Sodium Gluconate, Gluconic Acid, and Derivative Products from France and the People's Republic of China and Countervailing Duties on Imports of Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Telephone Conversation with the Petitioner," dated December 14, 2017; see also Petitioner's Letter, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China and France: Petitioner's Amendment to Volume I of Antidumping and Countervailing Duty Petition," dated December 15, 2017 (Revised Scope).

Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioner is requesting.⁶

Periods of Investigation

Because the Petitions were filed on November 30, 2017, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the France investigation is October 1, 2016 through September 30, 2017. Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the China investigation is April 1, 2017 through September 30, 2017.

Scope of the Investigations

The products covered by these investigations are GNA products from France and China. For a full description of the scope of these investigations, see the Appendix to this notice.

Scope Comments

During our review of the Petitions, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁷ As a result of these exchanges, the scope of the Petitions was modified to clarify the description of merchandise covered by the Petitions. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).⁸ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,⁹ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on January 9, 2018, which is 20 calendar days from the signature date of this notice. Any

rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on January 19, 2018, which is 10 calendar days from the initial comments deadline.¹⁰

Commerce requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).¹¹ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

Commerce will provide interested parties an opportunity to comment on the appropriate physical characteristics of GNA products to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an

¹⁰ See 19 CFR 351.303(b).

⁶ See the "Determination of Industry Support for the Petitions" section, *infra*.

⁷ See General Issues Supplemental Questionnaire, at 3-4; see also General Issues and China AD Supplement and General Issues and France AD Supplement.

⁸ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe GNA products, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on January 9, 2018. Any rebuttal comments must be filed by 5:00 p.m. ET on January 19, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the records of the France and China less-than-fair-value investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a

whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that GNA products, as defined in the scope, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.¹⁴

In determining whether the petitioner has standing under section 732(c)(4)(A)

of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the Appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2016.¹⁵ The petitioner states that there are no other known producers of GNA products in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.¹⁶

Our review of the data provided in the Petitions, the supplemental responses, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.¹⁷ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (e.g., polling).¹⁸ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.¹⁹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²⁰ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD

¹² See section 771(10) of the Act.

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁴ For a discussion of the domestic like product analysis, see Antidumping Duty Investigation Initiation Checklist: Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China (China AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Sodium Gluconate, Gluconic Acid, and Derivative Products from the People’s Republic of China and France (Attachment II); and Antidumping Duty Investigation Initiation Checklist: Sodium Gluconate, Gluconic Acid, and Derivative Products from France (France AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

¹⁵ See Volume I of the Petitions, at 3 and Exhibits I–1A and I–1B.

¹⁶ *Id.* at 3 and Exhibits I–1A and I–1B; see also General Issues and China AD Supplement, at 7; see also General Issues and France AD Supplement, at 7.

¹⁷ See China AD Initiation Checklist and France AD Initiation Checklist, at Attachment II.

¹⁸ See section 732(c)(4)(D) of the Act; see also China AD Initiation Checklist and France AD Initiation Checklist, at Attachment II.

¹⁹ See China AD Initiation Checklist and France AD Initiation Checklist, at Attachment II.

²⁰ *Id.*

investigations that it is requesting that Commerce initiate.²¹

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²²

The petitioner contends that the industry's injured condition is illustrated by a significant volume of subject imports, reduced market share, underselling and price depression or suppression, lost sales and revenues, and a negative impact on financial performance.²³ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁴

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which Commerce based its decision to initiate AD investigations of imports of GNA products from France and China. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For both France and China, the petitioner based its calculation of export price (EP) on U.S. imports of sodium gluconate under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 2918.16.5010 between October 2016 and September 2017 for France and April 2017 and September 2017 for China.²⁵ The petitioner made

deductions from EP for foreign inland freight and foreign brokerage and handling expenses.²⁶

Normal Value

For France, the petitioner was unable to obtain reliable information relating to the prices charged for GNA products in France or in any third country market.²⁷ Because home market and third country prices were not reasonably available, the petitioner calculated NV based on constructed value (CV). For further discussion of CV, see the section "Normal Value Based on Constructed Value" below.²⁸

With respect to China, Commerce considers China to be a non-market economy (NME) country.²⁹ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.³⁰ In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the granting of separate rates to individual exporters.

The petitioner claims that Thailand is an appropriate surrogate country for China because it is a market economy country that is at a level of economic development comparable to that of China; it is a significant producer of comparable merchandise; and public information from Thailand is available to value all material input factors except for the inputs of liquid glucose and sodium hydroxide.³¹ The petitioner stated that due to what it characterized

as high values in the Thai import data for glucose and sodium hydroxide, it instead relied on data for Brazil for these two inputs.³² Brazil was on the list of potential surrogate countries placed on the record by the petitioner, and the petitioner stated that Brazil had the largest quantity of imports of these two inputs.³³ Based on the information provided by the petitioner, we determine that it is appropriate to use Thailand as a surrogate country, but rely on the Brazil import data for the glucose and sodium hydroxide inputs, for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by China producers/exporters is not available, the petitioner relied on the production experience of its GNA products production facility in Peoria, Illinois as an estimate of Chinese manufacturers' FOPs.³⁴ The petitioner valued the estimated FOPs using surrogate values from Thailand for China, except for two inputs as noted above.³⁵ The petitioner used the average POI exchange rate to convert the data to U.S. dollars.³⁶

Normal Value Based on Constructed Value

As noted above, the petitioner was unable to obtain reliable information relating to the prices charged for GNA products in France or in any third country market; accordingly, the petitioner based NV on CV. Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, packing expenses, and profit.³⁷ For France, the petitioner calculated the COM based on its own input factors of production and usage rates for raw materials, labor, energy, packing, and a

²¹ *Id.*

²² See Volume I of the Petitions, at 16 and Exhibit I-9; see also General Issues and China AD Supplement, at 7; and General Issues and France AD Supplement, at 7.

²³ *Id.* at 13, 16-32 and Exhibits I-4 and I-9 through I-22.

²⁴ See China AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China and France (Attachment III); see also France AD Initiation Checklist, at Attachment III.

²⁵ See France AD Initiation Checklist and China AD Initiation Checklist.

²⁶ *Id.*

²⁷ See France AD Initiation Checklist.

²⁸ In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the CV and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

²⁹ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy*.

³⁰ See China AD Initiation Checklist.

³¹ See Volume II of the Petitions, at 2-3 and Exhibit II-2.

³² See Volume II of the Petitions, at 5.

³³ See Volume II of the Petitions, at 2-6 and Exhibit II-2.

³⁴ See Volume II of the Petitions at 4 and Volume IV of the Petitions at 4.

³⁵ See General Issues and China AD Supplement, at Revised Exhibit II-13.

³⁶ See General Issues and China AD Supplement, at Revised Exhibit II-22.

³⁷ See France AD Initiation Checklist.

by-product offset.³⁸ The input factors of production were valued using publicly available data on costs specific to France, during the proposed POI.³⁹ Specifically, the prices for raw material and packing inputs were based on publicly available import data for France.⁴⁰ Labor and energy costs were valued using publicly available sources for France.⁴¹ The petitioner calculated factory overhead, SG&A, and profit for France based on the average ratios found in the experience of a French producer of chemical products.⁴²

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of GNA products from France and China are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margin for GNA products for each of the countries covered by this initiation are as follows: (1) France—76.95 percent;⁴³ and (2) China—213.15 percent.⁴⁴

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the AD Petitions, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of GNA products from France and China are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.⁴⁵ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of

material injury by the ITC.⁴⁶ The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these AD investigations.⁴⁷

Respondent Selection

With respect to France, although Commerce normally relies on import data from Customs and Border Protection (CBP) to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, the petitioner identified only one company in France, Jungbunzlauer, S.A., as a producer/exporter of GNA products.⁴⁸ The petitioner relied on information from a subscription database of shipment data and additional research of publicly-available sources as support for its claim that there is only one producer/exporter of GNA products in France.⁴⁹ We currently know of no additional producers/exporters of GNA products from France. Accordingly, Commerce intends to examine the sole French producer/exporter identified in the Petition for the investigation. Parties wishing to comment on respondent selection for France must do so within five days of the publication of this notice in the **Federal Register**. Any such comments must be submitted no later than 5:00 p.m. ET on the due date, and must be filed electronically via ACCESS.

With respect to China, the petitioner named 82 producers/exporters as accounting for the majority of exports of GNA products to the United States from China.⁵⁰ In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to the investigation and, if necessary, base respondent selection on the responses received. For this investigation, Commerce will request Q&V information from known Chinese exporters and producers identified, with complete contact information, in the Petition. In addition, Commerce will post the Q&V questionnaire along with filing instructions on the Enforcement

and Compliance website at <http://www.trade.gov/enforcement/news.asp>.

Producers/exporters of GNA products from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's website. The Q&V response must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on January 4, 2018. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.⁵¹ The specific requirements for submitting a separate-rate application in China investigation are outlined in detail in the application itself, which is available on Commerce's website at <http://enforcement.trade.gov/nme/nme-sep-rate.html>. The separate-rate application will be due 30 days after publication of this initiation notice.⁵² Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V response will not receive separate-rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which

³⁸ See General Issues and France AD Supplement, at Revised Exhibit IV-10.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See France AD Initiation Checklist.

⁴⁴ See China AD Initiation Checklist.

⁴⁵ See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

⁴⁶ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

⁴⁷ *Id.* at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁴⁸ See Volume I of the Petitions, at Exhibit I-5B.

⁴⁹ *Id.*; see also Volume IV of the Petitions, at 1.

⁵⁰ See General Issues and China AD Supplement, at Revised Exhibit I-5A.

⁵¹ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving Non-Market Economy Countries (April 5, 2005), available at <http://enforcement.trade.gov/policy/bull05-1.pdf> (Policy Bulletin 05.1).

⁵² Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.⁵³

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of France and China via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of GNA products from France and/or China are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country.⁵⁴ Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁵⁵ and, if the information is submitted to rebut, clarify, or correct

factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁵⁶ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁵⁷ Parties must use the certification formats provided in 19 CFR 351.303(g).⁵⁸ Commerce intends to reject factual submissions if the submitting party does not comply with

the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: December 20, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The scope of these investigations covers all grades of sodium gluconate, gluconic acid, liquid gluconate, and glucono delta lactone (GDL) (collectively GNA Products), regardless of physical form (including, but not limited to substrates; solutions; dry granular form or powders, regardless of particle size; or as a slurry). The scope also includes GNA Products that have been blended or are in solution with other product(s) where the resulting mix contains 35 percent or more of sodium gluconate, gluconic acid, liquid gluconate, and/or GDL by dry weight.

Sodium gluconate has a molecular formula of $\text{NaC}_6\text{H}_{11}\text{O}_7$. Sodium gluconate has a Chemical Abstract Service (CAS) registry number of 527–07–1, and can also be called “sodium salt of gluconic acid” and/or sodium 2, 3, 4, 5, 6 pentahydroxyhexanoate. Gluconic acid has a molecular formula of $\text{C}_6\text{H}_{12}\text{O}_7$. Gluconic acid has a CAS registry number of 526–95–4, and can also be called 2, 3, 4, 5, 6 pentahydroxycaproic acid. Liquid gluconate is a blend consisting only of gluconic acid and sodium gluconate in an aqueous solution. Liquid gluconate has CAS registry numbers of 527–07–1, 526–95–4, and 7732–18–5, and can also be called 2, 3, 4, 5, 6-pentahydroxycaproic acid-hexanoate. GDL has a molecular formula of $\text{C}_6\text{H}_{10}\text{O}_6$. GDL has a CAS registry number of 90–80–2, and can also be called d-glucono-1,5-lactone.

The merchandise covered by the scope of these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 2918.16.1000, 2918.16.5010, and 2932.20.5020. Merchandise covered by the scope may also enter under HTSUS subheadings 2918.16.5050, 3824.99.2890, and 3824.99.9295. Although the HTSUS subheadings and CAS registry numbers are

⁵³ See Policy Bulletin 05.1 at 6 (emphasis added).

⁵⁴ *Id.*

⁵⁵ See 19 CFR 351.301(b).

⁵⁶ See 19 CFR 351.301(b)(2).

⁵⁷ See section 782(b) of the Act.

⁵⁸ See also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2017-28430 Filed 1-3-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-357-821 and C-560-831]

Biodiesel From the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing countervailing duty (CVD) orders on biodiesel from the Republic of Argentina (Argentina) and the Republic of Indonesia (Indonesia).

DATES: Applicable January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace (Argentina) or Gene Calvert (Indonesia); AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6251, or (202) 482-3586, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on November 16, 2017, Commerce published its affirmative final determinations in the CVD investigations of biodiesel from Argentina and Indonesia.¹ On December 21, 2017, the ITC notified Commerce of its affirmative final determination, pursuant to section 705(d) of the Act, that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of biodiesel from Argentina and Indonesia.² On December 28, 2017, the

ITC published its final determination in the **Federal Register**.³

Scope of the Order

The product covered by these orders is biodiesel from Argentina and Indonesia. For a complete description of the scope of these orders, see the Appendix to this notice.

Countervailing Duty Orders

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured by reason of subsidized imports of biodiesel from Argentina and Indonesia.⁴ Therefore, in accordance with section 705(c)(2) of the Act, we are issuing these CVD orders.

Because the ITC determined that imports of biodiesel from Argentina and Indonesia are materially injuring a U.S. industry, unliquidated entries of such merchandise from Argentina and Indonesia, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties. Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of biodiesel from Argentina and Indonesia in an amount equal to the net countervailable subsidy rates for the subject merchandise. Countervailing duties will be assessed on unliquidated entries of biodiesel from Argentina and Indonesia entered, or withdrawn from warehouse for consumption, on or after August 28, 2017, the date on which Commerce published its preliminary determinations in the **Federal Register**.⁵

Continuation of Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will direct CBP to continue to suspend liquidation of all relevant entries of biodiesel from Argentina and Indonesia, and to assess, upon further instruction by Commerce pursuant to 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount

based on the net countervailable subsidy rates for the subject merchandise. These instructions will remain in effect until further notice.

Subsidy Rates

Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Exporters/Producers from Argentina	Subsidy rate %
LDC Argentina S.A. ⁶	72.28
Vicentin S.A.I.C. ⁷	71.45
All Others	71.87
Wilmar Trading Co., Ltd	34.45
PT Musim Mas	64.73
All Others	38.95

Notification to Interested Parties

This notice constitutes the CVD orders with respect to biodiesel from Argentina and Indonesia, pursuant to section 706(a) of the Act. Interested parties can find a list of CVD orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

These orders are issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: December 28, 2017.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

Scope of the Orders

The product covered by these orders is biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically-based waste oils or greases, and other biologically-based oil or fat sources. These orders cover biodiesel in pure form (B100) as well as fuel mixtures containing at least 99 percent biodiesel by volume (B99). For fuel mixtures containing less than 99 percent biodiesel by volume, only the biodiesel component of the mixture is covered by the scope of these orders.

Biodiesel is generally produced to American Society for Testing and Materials International (ASTM) D6751 specifications, but it can also be made to other specifications. Biodiesel commonly has one of the following Chemical Abstracts Service (CAS) numbers, generally depending upon the feedstock used: 67784-80-9 (soybean oil

¹ See *Biodiesel from the Republic of Argentina: Final Affirmative Countervailing Duty Determination*, 82 FR 53477 (November 16, 2017) (*Argentina Final Determination*); see also *Biodiesel from the Republic of Indonesia: Final Affirmative Countervailing Duty Determination*, 82 FR 53471 (November 16, 2017) (*Indonesia Final Determination*).

² See Letter from the ITC to the Honorable Gary Taverman, dated December 21, 2017 (Notification of ITC Final Determination); see also *Biodiesel from Argentina and Indonesia*, Investigation Nos. 701-

TA-571-572 and 731-TA-1347-1348 (Final) (December 2017).

³ See *Biodiesel from Argentina and Indonesia: Determinations*, 82 FR 61585 (December 28, 2017).

⁴ See Notification of ITC Final Determination.

⁵ See *Biodiesel from Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, In Part*, 82 FR 40748 (August 28, 2017); *Biodiesel from the Republic of Indonesia: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 40746 (August 28, 2017).

⁶ In the final determination, Commerce found the following companies to be cross-owned with LDC Argentina S.A.: LDC Semillas S.A., Semillas del Rosario S.A.

⁷ In the final determination, Commerce found the following companies to be cross-owned with Vicentin S.A.I.C.: Oleaginosa San Lorenzo S.A., Los Amores S.A.

methyl esters); 91051–34–2 (palm oil methyl esters); 91051–32–0 (palm kernel oil methyl esters); 73891–99–3 (rapeseed oil methyl esters); 61788–61–2 (tallow methyl esters); 68990–52–3 (vegetable oil methyl esters); 129828–16–6 (canola oil methyl esters); 67762–26–9 (unsaturated alkylcarboxylic acid methyl ester); or 68937–84–8 (fatty acids, C12–C18, methyl ester).

The B100 product subject to the orders is currently classifiable under subheading 3826.00.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), while the B99 product is currently classifiable under HTSUS subheading 3826.00.3000. Although the HTSUS subheadings, ASTM specifications, and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2017–28480 Filed 1–3–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0122]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Survey on the Use of Funds Under Title II, Part A: Improving Teacher Quality State Grants—State-Level Activity Funds

AGENCY: Department of Education (ED), Office of Elementary and Secondary Education (OESE).

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 February 5, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2017–ICCD–0122. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education,

400 Maryland Avenue SW, LBJ, Room 216–44, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tawanda Avery, 202–453–6471.

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: Survey on the Use of Funds Under Title II, Part A: Improving Teacher Quality State Grants—State-Level Activity Funds.

OMB Control Number: 1810–0711.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 520.

Abstract: The Elementary and Secondary Education Act of 1965, as reauthorized by the Every Student Succeeds Act of 2015 (ESSA), provides funds to States to prepare, train, and recruit high-quality teachers, principals, and other school leaders. These funds are provided to districts through Title II, Part A (Supporting Effective Instruction Grants). The purpose of these surveys is to provide the U.S. Department of Education with a better understanding of how State Educational Agencies

(SEAs) utilize these funds. This survey also collects data on teacher, principal, and other school leader effectiveness and retention for States to meet new reporting requirements.

Similar data have been collected under the Survey on the Use of Funds Under Title II, Part A prior to reauthorization of ESEA. This OMB clearance request is to continue these types of analyses, but using new data collection instruments updated to reflect changes due to the reauthorization of ESEA by the ESSA. The request is to begin data collection and analyses for the 2018–19 school year and subsequent years.

Dated: December 29, 2017.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–28499 Filed 1–3–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–32–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

Take notice that on December 18, 2017, Equitrans, L.P. (Equitrans), 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, filed a prior notice request pursuant to sections 157.205 and 157.213 of the Commission's regulations under the Natural Gas Act for authorization to construct a horizontal well at Equitrans' Mobley Storage Field located in Wetzel County, West Virginia. Specifically, the horizontal well is intended to (1) reduce gas coning through a reduction in reservoir drawdown and (2) increase injection withdrawal capability via an increased wellbore length exposed to the Mobley Storage Field pool formation. The peak deliverability at the Mobley Storage Field will increase from 125 million cubic feet per day (MMcf/d) to 250 MMcf/d. The project will enhance system flexibility and reliability, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call

toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this Application should be directed to Paul W. Diehl, Counsel, Midstream at Equitrans, L.P., 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, by phone (412) 395-5540, or by fax (412) 553-7781, or by email at pdiehl@eqt.com.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be

required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (www.ferc.gov) under the "e-Filing" link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: December 28, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017-28469 Filed 1-3-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18-42-000.

Applicants: Public Service Company of New Hampshire, HSE Hydro NH AC, LLC.

Description: Application under Section 203(a)(1) of Public Service Company of New Hampshire, et al.
Filed Date: 12/28/17.

Accession Number: 20171228-5100.

Comments Due: 5 p.m. ET 1/18/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18-25-000.

Applicants: Clean Energy Future-Lordstown, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Clean Energy Future-Lordstown, LLC.

Filed Date: 12/28/17.

Accession Number: 20171228-5129.

Comments Due: 5 p.m. ET 1/18/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1338-002.

Applicants: Southern Indiana Gas and Electric Company, Inc.

Description: Triennial Market Based Rates Update in Central Region of Southern Indiana Gas and Electric Company, Inc.

Filed Date: 12/28/17.

Accession Number: 20171228-5212.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER10-2265-014; ER14-1818-014; ER10-2262-008; ER11-2062-023; ER11-2508-022; ER11-4307-023; ER12-261-022; ER10-1581-020; ER13-1791-009; ER13-1965-013; ER11-4308-023; ER11-2805-022.

Applicants: NRG Power Marketing LLC, Boston Energy Trading and Marketing LLC, El Segundo Power, LLC, Energy Plus Holdings LLC, GenOn Energy Management, LLC, Green Mountain Energy Company, Independence Energy Group LLC, Long Beach Peak LLC, NRG Florida LP, NRG Wholesale Generation LP, Reliant Energy Northeast LLC, RRI Energy Services, LLC.

Description: Updated Market Power Analysis in the Southeast Region of the NRG MBR Sellers.

Filed Date: 12/28/17.

Accession Number: 20171228-5207.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER10-2819-005; ER14-413-003; ER10-2431-006; ER14-1390-004; ER10-2358-006; ER14-1397-004.

Applicants: ALLETE, Inc., ALLETE Clean Energy, Inc., Chanarambie Power Partners LLC, Lake Benton Power Partners LLC, Storm Lake Power Partners I LLC, Storm Lake Power Partners II, LLC.

Description: Triennial Market Power Analysis for Central Region of ALLETE, Inc., et al.

Filed Date: 12/28/17.

Accession Number: 20171228-5199.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER17-856-002.

Applicants: Rockland Electric Company, PJM Interconnection, L.L.C.

Description: Compliance filing: RECO submits compliance filing to 11/29/2017 order re: Settlement Offer to be effective 4/3/2017.

Filed Date: 12/28/17.

Accession Number: 20171228-5048.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER17-1198-000.

Applicants: Southwestern Electric Cooperative, Inc.

Description: Motion to Intervene and Formal Challenge of the Southwestern Electric Cooperative, Inc.

Filed Date: 4/17/17.

Accession Number: 20170417-5286.

Comments Due: 5 p.m. ET 1/12/18.

Docket Numbers: ER17-1562-000.

Applicants: Energy Unlimited, Inc.

Description: Report Filing: Energy Unlimited, Inc. Refund Report and

Request for Privileged Treatment to be effective N/A.

Filed Date: 12/26/17.

Accession Number: 20171226–5078.

Comments Due: 5 p.m. ET 1/16/18.

Docket Numbers: ER17–1794–003.

Applicants: Innovative Solar 42, LLC.

Description: Compliance filing: Notice of Non-Material Change in Status and Revised MBR Tariff to be effective 12/29/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5218.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–551–000.

Applicants: Bucksport Mill LLC.

Description: Notice of Cancellation of Market-Based Rate Tariff of Bucksport Mill LLC.

Filed Date: 12/27/17.

Accession Number: 20171227–5162.

Comments Due: 5 p.m. ET 1/17/18.

Docket Numbers: ER18–552–000.

Applicants: Clean Energy Future-Lordstown, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 2/27/2018.

Filed Date: 12/28/17.

Accession Number: 20171228–5098.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–553–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Second Revised Service Agreement No. 3753, Queue No. AB1–058 to be effective 11/29/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5211.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–554–000.

Applicants: Carville Energy LLC.

Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filing to be effective 3/1/2018.

Filed Date: 12/28/17.

Accession Number: 20171228–5217.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–555–000.

Applicants: Union Electric Company.

Description: Market-Based Triennial Review Filing: Union Electric Co. Triennial Market Power Filing to be effective 12/29/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5219.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER18–556–000.

Applicants: Ameren Illinois Company.

Description: Market-Based Triennial Review Filing: Ameren Illinois Company Triennial Market Power Filing to be effective 12/29/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5221.

Comments Due: 5 p.m. ET 2/26/18.

Docket Numbers: ER18–557–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–12–29 SA 3079 Dakota Range I–OTP–MDU GIA (J436) to be effective 12/15/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5244.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–558–000.

Applicants: GridLiance West Transco LLC.

Description: § 205(d) Rate Filing: TRBA for HVTS sold to GridLiance to be effective 1/1/2018.

Filed Date: 12/28/17.

Accession Number: 20171228–5248.

Comments Due: 5 p.m. ET 1/18/18.

Docket Numbers: ER18–559–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–12–28 SA 3078 Dakota Range II–OTP–MDU GIA (J437) to be effective 12/15/2017.

Filed Date: 12/28/17.

Accession Number: 20171228–5249.

Comments Due: 5 p.m. ET 1/18/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–28468 Filed 1–3–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0392, 3060–0741]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 5, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of

1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0392.

Title: 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,775 respondents; 1,775 Responses.

Estimated Time per Response: 0.5–75 hours.

Frequency of Response: On-occasion reporting and third-party disclosure requirements.

Obligation to Respond: Required to obtain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 224.

Total Annual Burden: 2,941 hours.

Total Annual Cost: \$450,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked. However, respondents may request that materials or information submitted to the Commission in a complaint proceeding be withheld from public inspection under 47 CFR 0.459.

Needs and Uses: The Commission is requesting OMB approval for a revision to an existing information collection. 47 CFR 1.1424 states that the procedures for handling pole attachment complaints filed by incumbent local exchange carriers (ILECs) are the same as the procedures for handling other pole attachment complaints. Currently, OMB Collection No. 3060–0392, among other things, tracks the burdens associated with utilities defending against complaints brought by ILECs related to unreasonable rates, terms, and

conditions for pole attachments. In *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17–84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17–154 (rel. Nov. 29, 2017) (*Wireline Infrastructure Order*), the Commission, among other things, expanded the type of pole attachment complaints that can be filed by ILECs, now allowing them to file complaints related to a denial of pole access by utilities. The Commission will use the information collected under this revision to 47 CFR 1.1424 to hear and resolve pole access complaints brought by ILECs and to determine the merits of the complaints.

OMB Control Number: 3060–0741.

Title: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, GN Docket No. 17–84.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,357 respondents; 573,928 responses.

Estimated Time per Response: 0.5–4.5 hours.

Frequency of Response: On occasion reporting requirements; recordkeeping and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 222 and 251.

Total Annual Burden: 575,448 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. 251, is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. Section 222(e) is also designed to spur competition by prescribing requirements for the sharing of subscriber list information. These information collection requirements are designed to help implement certain provisions of sections 222(e) and 251, and to eliminate operational barriers to competition in the telecommunications services market. Specifically, these

information collection requirements will be used to implement (1) local exchange carriers' ("LECs") obligations to provide their competitors with dialing parity and non-discriminatory access to certain services and functionalities; (2) incumbent local exchange carriers' ("ILECs") duty to make network information disclosures; and (3) numbering administration. The Commission estimates that the total annual burden of the entire collection, as revised, is 575,840 hours. This revision relates to a change in one of many components of the currently approved collection—specifically, certain reporting, recordkeeping and/or third-party disclosure requirements under section 251(c)(5). In November 2017, the Commission adopted new rules concerning certain information collection requirements implemented under section 251(c)(5) of the Act, pertaining to network change disclosures. Most of the changes to those rules apply specifically to a certain subset of network change disclosures, namely notices of planned copper retirements. In addition, the changes remove a rule that prohibits incumbent LECs from engaging in useful advanced coordination with entities affected by network changes. The changes are aimed at removing unnecessary regulatory barriers to the deployment of high-speed broadband networks. As a result of these changes, the total annual burden hours have been reduced by 392 hours. The Commission estimates that the revision does not result in any additional outlays of funds for hiring outside contractors or procuring equipment.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2017–28473 Filed 1–3–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1122]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction

Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 5, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize

the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060-1122.

Title: Preparation of Annual Reports to Congress for the Collection and Expenditure of Fees or Charges for Enhanced 911 (E911) Services under the NET 911 Improvement Act of 2008.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local or Tribal Government.

Number of Respondents and

Responses: 56 respondents and 56 responses.

Estimated Time per Response: 55 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110-283, 122 Stat. 2620 (2008) (NET 911 Act).

Total Annual Burden: 3,080 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Federal Communications Commission (Commission) is directed by statute (New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110-283, 122 Stat. 2620 (2008) (NET 911 Act)) to submit an annual "Fee Accountability Report" to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representative "detailing the status in each State of the collection and distribution [of] fees or charges" for "the support or implementation of 911 or enhanced 911 services," including "findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purpose other than the purpose for which any such fees or charges are specified." (NET 911 Act, 122 Stat. at 2622). The statute directs the Commission to submit its first annual report within one year after the date of enactment of the NET 911 Act. Given that the NET 911 Act was enacted on July 23, 2008, the first annual report was due to Congress on July 22, 2009.

Description of Information Collection: The Commission will collect information for the annual preparation of the Fee Accountability Report via a web-based survey that appropriate State officials (e.g., State 911 Administrators and Budget Officials) will be able to access to submit data pertaining to the collection and distribution of fees or charges for the support or implementation of 911 or enhanced 911 services, including data regarding whether their respective state collects and distributes such fees or charges, the nature (e.g., amount and method of assessment or collection) and the amount of revenues obligated or expended for any purpose other than the purpose for which any such 911 or enhanced 911 service fees or charges are specified. Consistent with Sections 6(f) of the NET 911 Act, the Commission will request that state officials report this information with respect to the fees and charges in connection with implementation of 911 or E-911 services within their state, including any political subdivision, Indian tribe and/or village and regional corporation serving any region established pursuant to the Alaska Native Claims Settlement Act that otherwise lie within their state boundaries. In addition, consistent with the definition of "State" set out in Section 3(40) of the Communications Act, the Commission will collect this information from, states as well as the District of Columbia and the inhabited U.S. Territories and possessions.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2017-28472 Filed 1-3-18; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, January 9, 2018 at 10:00 a.m.

PLACE: 999 E Street NW, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION:
Judith Ingram, Press Officer, Telephone:
(202) 694-1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2018-00057 Filed 1-2-18; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)-523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 012337-002.

Title: HSDG/Zim ECSA Space Charter Agreement.

Parties: Hamburg Sud and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW; Washington, DC 20036.

Synopsis: The amendment deletes the expiration date on the Agreement.

Agreement No.: 011574-021.

Title: Pacific Islands Discussion Agreement.

Parties: Compagnie Maritime Marfret and Polynesia Line, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW; Washington, DC 20036.

Synopsis: The amendment deletes Hamburg Sud as a party to the Agreement.

Agreement No.: 011830-011.

Title: Indamex Cross Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM S.A.; Hapag-Lloyd AG; Nippon Yusen Kaisha; and Orient Overseas Container Line Limited.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW; Washington, DC 20036.

Synopsis: The amendment increases the number and size of vessels to be operated under the Agreement. It also adds authority for ad hoc space chartering among the parties and restates the Agreement.

Agreement No.: 011961-024.

Title: The Maritime Credit Agreement.

Parties: COSCO Container Lines Company Limited; Maersk Line A/S;

Wallenius Wilhelmsen Logistics; and ZIM Integrated Shipping Services Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW; Washington, DC 20036.

Synopsis: The amendment deletes Kawasaki Kisen Kaisha, Ltd. as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: December 29, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017-28485 Filed 1-3-18; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL MARITIME COMMISSION

[Petition No. P5-17]

Petition of Ocean Network Express Pte. Ltd. for an Exemption; Notice of Filing and Request for Comments

Notice is hereby given that Ocean Network Express Pte. Ltd. ("Petitioner"), has petitioned the Commission pursuant to 46 CFR 502.94 for an exemption from filing individual service contract amendments.

Petitioner states that it will soon ". . . acquire the assets of the container shipping divisions of Kawasaki Kisen Kaisha, Ltd. ("K Line"); Mitsui O.S.K. Lines, Ltd., ("MOL"); and Nippon Yusen Kaisha ("NYK") on or about April 1, 2018, at which point [the Petitioner] will operate as an ocean common carrier." Petitioner states it will obtain approximately 4,800 service contracts from K Line, MOL, and NYK. Petitioner claims "[it] would be an undue burden on [itself] and its shipper parties to prepare and file an individual amendment for each of these service contracts." Petitioner claims "[the] relief sought in this petition is . . . purely administrative in nature." Petitioner intends to issue a ". . . notice that will cross-reference [its new] tariffs, which will govern the assigned service contracts, thereby eliminating the need to amend the service contracts to identify the [Petitioner's] tariffs as the governing tariffs."

In order for the Commission to make a thorough evaluation of the exemption requested in the Petition, interested parties are requested to submit views or arguments in reply to the Petition no later than January 10, 2018. Replies shall be sent to the Secretary by email to Secretary@fmc.gov or by mail to Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573-0001, and replies shall be served on Petitioner's counsels, Wayne R. Rhode, Cozen O'Connor, 1200 19th

Street NW, #300, Washington, DC 20036, wrohde@cozen.com, and Joshua P. Stein, Cozen O'Connor, 1200 19th Street NW, #300, Washington, DC 20036, jstein@cozen.com.

Non-confidential filings may be submitted in hard copy to the Secretary at the above address or by email as a PDF attachment to Secretary@fmc.gov and include in the subject line: P5-17 (Commenter/Company). Confidential filings should not be filed by email. A confidential filing must be filed with the Secretary in hard copy only, and be accompanied by a transmittal letter that identifies the filing as "Confidential-Restricted" and describes the nature and extent of the confidential treatment requested. The Commission will provide confidential treatment to the extent allowed by law for confidential submissions, or parts of submissions, for which confidentiality has been requested. When a confidential filing is submitted, there must also be submitted a public version of the filing. Such public filing version shall exclude confidential materials, and shall indicate on the cover page and on each affected page "Confidential materials excluded." Public versions of confidential filings may be submitted by email. The Petition will be posted on the Commission's website at <http://www.fmc.gov/P5-17>. Replies filed in response to the Petition will also be posted on the Commission's website at this location.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017-28442 Filed 1-3-18; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than January 19, 2018.

A. *Federal Reserve Bank of Minneapolis* (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Alexandra Bosshard, Washington, DC*; to both retain and acquire additional shares of Bosshard Banco, Ltd., La Crosse, Wisconsin, and thereby indirectly retain and acquire additional shares of First National Bank of Bangor, Bangor, Wisconsin, and Intercity State Bank, Schofield, Wisconsin, as a member of the Bosshard Family Group that controls Bosshard Banco, Ltd.

B. *Federal Reserve Bank of Dallas* (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Roy Thomas Pitcock, Jr., Graham, Texas; Medora Jacqueline Pitcock Eubank, Fort Worth, Texas; the Melissa Pitcock Trust, Graham, Texas; and Angela Allison Pitcock Adams, Aledo, Texas (together, the Pitcock Family Group)*; as a group acting in concert to both retain and acquire additional shares of Graham Savings Financial Corp., and thereby indirectly retain and acquire additional shares of Graham Savings and Loan SSB, both in Graham, Texas.

C. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Michael D. Werner, as trustee of the Michael D. Werner Revocable Trust, Key West, Florida; and Judith Werner, Waupun, Wisconsin*; as a group acting in concert to retain voting shares of National Bancshares, Inc., and thereby indirectly retain voting shares of NBW Bank, both in Waupun, Wisconsin.

Board of Governors of the Federal Reserve System, December 29, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017-28475 Filed 1-3-18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 2018.

A. *Federal Reserve Bank of Atlanta* (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *FCB Financial Holdings, Inc., Weston, Florida*; to acquire Floridian Community Holdings, and thereby acquire Floridian Community Bank, both Davie, Florida; and to establish Floridian Custody Services, Inc., Davie, Florida, and thereby engage in certain institutional broker-dealer activities, pursuant to sections 4(k) and 4(j) of the Bank Holding Company Act.

B. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Farmington Bancorp, Inc., Farmington, Illinois*; to acquire Laura State Bank, Williamsfield, Illinois.

C. *Federal Reserve Bank of Dallas* (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *The 2013 Monte Hulse Family Irrevocable Trust I, Waco, Texas*; to acquire up to 30 percent of the voting shares of FCT Bancshares, Inc., and thereby indirectly acquire voting shares of First National Bank of Central Texas, both Waco, Texas.

D. *Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Caldwell County Bancshares, Inc., Hamilton, Missouri*; to acquire Horizon State Bank, Cameron, Missouri.

2. *First State Holding Co., Lincoln, Nebraska*; to acquire Wallco, Inc., and thereby indirectly acquire The Nehawka Bank, both Nehawka, Nebraska.

E. *Federal Reserve Bank of Richmond* (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528.

Comments can also be sent electronically to

Comments.applications@rich.frb.org:

1. *Old Point Financial Corporation, Hampton, Virginia*; to acquire Citizens National Bank, Windsor, Virginia.

F. *Federal Reserve Bank of St. Louis* (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to

Comments.applications@stls.frb.org:

1. *Guaranty Federal Bancshares, Inc., Springfield, Missouri*; to acquire Hometown Bancshares, Inc., and thereby indirectly acquire Hometown Bank, N.A., both Carthage, Missouri.

Board of Governors of the Federal Reserve System, December 29, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017-28476 Filed 1-3-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS-10518]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of

the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *February 5, 2018*.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806 OR, Email: OIRA_submission@omb.eop.gov.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of the following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the

Federal Register concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Participation in the Intravenous Immune Globulin (IVIG) Demonstration; *Use:* Traditional fee-for-service (FFS) Medicare covers some or all components of home infusion services depending on the circumstances. By special statutory provision, Medicare Part B covers intravenous immune globulin (IVIG) for persons with primary immune deficiency disease (PID) who wish to receive the drug at home. However, Medicare does not separately pay for any services or supplies to administer it if the person is not homebound and otherwise receiving services under a Medicare Home Health episode of care. As a result, many beneficiaries have chosen to receive the drug at their doctor's office or in an outpatient hospital setting.

On September 29, 2017, the "Disaster Tax Relief and Airport and Airway Extension Act of 2017" was enacted into law. Section 302 of this legislation extends the Medicare IVIG Demonstration through December 31, 2020. While existing beneficiaries enrolled in the demonstration as of September 30, 2017 will be automatically re-enrolled, in order to continue to enroll new beneficiaries into the demonstration, an application is required. The original enrollment and financial limits remain and CMS will continue to monitor both to assure that statutory limitations are not exceeded.

This collection of information is for the application to participate in the demonstration. Participation is voluntary and may be terminated by the beneficiary at any time. Beneficiaries who do not participate will continue to be eligible to receive all of the regular Medicare Part B benefits that they are

would be eligible for in the absence of the demonstration. *Form Number:* CMS-10518 (OMB control number: 0938-1246); *Frequency:* Annually; *Affected Public:* Individuals and households; *Number of Respondents:* 1,220; *Total Annual Responses:* 1,220 *Total Annual Hours:* 305. (For policy questions regarding this collection contact Jody Blatt at 410-786-6921.)

Dated: December 29, 2017.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017-28497 Filed 1-3-18; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970-0145]

Proposed Information Collection Activity; Comment Request

Title: State Plan for the Temporary Assistance for Needy Families (TANF).

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline specifying how the state's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. It is used to provide the public with information about the program.

Authority to require States to submit a State TANF plan is contained in section 402 of the Social Security Act, as amended by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States are required to submit new plans periodically (*i.e.*, within a 27-month period).

We are proposing to continue the information collection without change.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title Amendments	18	1	3	54
State TANF plan	18	1	30	540

Estimated Total Annual Burden Hours: 594.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017–28445 Filed 1–3–18; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community-Based Family Resource and Support Grants.

OMB No.: 0970–0155.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Grants for the Prevention of Child Abuse and Neglect (administratively known as the

Community Based Child Abuse Prevention Program, CBCAP)), as set forth in Title II of Public Law 111–320, Child Abuse Prevention and Treatment Act Amendments of 2010, provides direction to the States and Territories to accomplish the purposes of (1) to support community-based efforts to develop, operate, expand, enhance, and coordinate initiatives, programs, and activities to prevent child abuse and neglect and to support the coordination of resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect; and (2) to foster understanding, appreciation and knowledge of diverse populations in order to effectively prevent and treat child abuse and neglect. This Program Instruction contains information collection requirements that are found in (Pub. L. 111–320) at sections 201; 202; 203; 205; 206; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Report	52	1	24	1,248

Estimated Total Annual Burden Hours: 3,328.

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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017–28432 Filed 1–3–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970–0209]

Proposed Information Collection Activity; Comment Request

Proposed Projects: Intergovernmental Reference Guide.

Title: Intergovernmental Reference Guide (IRG).

Description: The Intergovernmental Reference Guide (IRG) is a centralized and automated repository of state and tribal profiles, which contains high-level descriptions of each state and

tribal child support enforcement (CSE) program. These profiles provide state and tribal CSE agencies, and foreign countries with an effective and efficient method for updating and accessing information needed to process intergovernmental child support cases.

The IRG information collection activities are authorized by: (1) 42 U.S.C. 652(a)(7), which requires the federal Office of Child Support Enforcement (OCSE) to provide technical assistance to state child support enforcement agencies to help them establish effective systems for collecting child and spousal support; (2) 42 U.S.C. 666(f), which requires states to enact the Uniform Interstate Family Support Act; (3) 45 CFR 301.1, which defines an intergovernmental case to include cases between states and tribes; (4) 45 CFR 309.120, which requires a tribal child support program to include intergovernmental procedures in its tribal IV–D plan; and (5) 45 CFR 303.7, which requires state child support

agencies to provide services in intergovernmental cases.

Respondents: All state and tribal CSE agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intergovernmental Reference Guide: State Profile Guidance—(States and Territories)	54	18	0.3	291.6
Intergovernmental Reference Guide: Tribal Profile Guidance	62	18	0.3	334.8
Total	626.4

Estimated Total Annual Burden Hours: 626.4 hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. Email address infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Report Clearance Officer.

[FR Doc. 2017-28443 Filed 1-3-18; 8:45 am]

BILLING CODE 4184-41-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-D-6854]

Good Abbreviated New Drug Application Submission Practices; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Good ANDA Submission Practices.” This guidance is intended to assist applicants preparing to submit to FDA abbreviated new drug applications (ANDAs). This draft guidance highlights common, recurring deficiencies that may lead to a delay in the approval of an ANDA. It also makes recommendations to applicants on how to avoid these deficiencies with the goal of minimizing the number of review cycles necessary for approval.

DATES: Submit either electronic or written comments on the draft guidance by March 5, 2018 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-2017-D-6854 for “Good ANDA Submission Practices.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential

with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance 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 document.

FOR FURTHER INFORMATION CONTACT: Michelle Sollenberger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1673, Silver Spring, MD 20993-0002, 240-402-0981.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Good ANDA Submission Practices." This draft guidance is intended to assist

applicants preparing to submit ANDAs to FDA. It highlights common, recurring deficiencies that may lead to a delay in the approval of an ANDA. This draft guidance also makes recommendations to applicants on how to avoid these deficiencies so that applicants can submit ANDAs that may be approved in the first review cycle. This draft guidance has been developed as part of FDA's "Drug Competition Action Plan," which, in coordination with the Generic Drug User Fee Amendments (GDUFA I and II) (Pub. L. 112-144 and Pub. L. 115-52, respectively) and other FDA activities, is expected to increase competition in the market for prescription drugs, facilitate entry of high-quality and affordable generic drugs, and improve public health.

In conjunction with this draft guidance, FDA is issuing a *Good ANDA Assessment Practices Manual of Policies and Procedures*, which establishes good ANDA assessment practices for the Office of Generic Drugs and the Office of Pharmaceutical Quality to increase their operational efficiency and effectiveness. This draft guidance and the *Manual of Policies and Procedures* are intended to build upon the success of the GDUFA program and to help reduce the number of review cycles for an ANDA to attain approval.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on good ANDA submission practices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This draft guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in the draft guidance have been approved under OMB control numbers 0910-0001 and 0910-0786.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov>.

Dated: December 26, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017-28435 Filed 1-3-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-R1-ES-2017-N161;
FXES11140100000-189-FF01E00000]**

Proposed Graysmarsh Safe Harbor Agreement for the Taylor's Checkerspot Butterfly, Clallam County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: Graysmarsh, LLC, hereafter referred to as the applicant, has applied to the U.S. Fish and Wildlife Service (Service, us) for an enhancement of survival permit (permit) pursuant to the Endangered Species Act of 1973, as amended. The permit application includes a draft safe harbor agreement (SHA). The permit would authorize incidental take of the endangered Taylor's checkerspot butterfly. We have prepared a draft environmental action statement (EAS) for our preliminary determination that the SHA and permit decision may be eligible for categorical exclusion under the National Environmental Policy Act (NEPA). We invite the public to review and comment on the permit application, draft SHA, and the draft EAS.

DATES: To ensure consideration, please send your written comments by February 5, 2018.

ADDRESSES: You may view or download copies of the draft SHA, and draft EAS and obtain additional information on the internet at <http://www.fws.gov/wafwo/> or obtain hard copies or a CD-ROM by calling the phone number listed below. You may submit comments or requests for more information by any of the following methods:

- **Email:** wfwocomments@fws.gov. Include "Graysmarsh SHA" in the subject line of the message.
- **U.S. Mail:** Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.
- **In-Person Drop-off, Viewing, or Pickup:** Call 360-753-9564 to make an appointment (necessary for viewing/pickup only) during regular business

hours at Washington Fish and Wildlife Office (address above).

FOR FURTHER INFORMATION CONTACT:

Mark Ostwald, U.S. Fish and Wildlife Service (by mail at the address in ADDRESSES), telephone 360-753-9564. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Graysmarsh, LLC, hereafter referred to as the applicant, has applied to the U.S. Fish and Wildlife Service (Service, us) for an enhancement of survival permit (permit) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; ESA), as amended. The permit application includes a draft safe harbor agreement (SHA), which covers 1,105 acres managed by the applicant in Clallam County, Washington. The proposed term of the permit and the SHA is 50 years. The permit would authorize incidental take of the endangered Taylor's checkerspot butterfly (*Euphydryas editha taylori* (TCB)) in exchange for habitat conservation actions that are expected to provide a net conservation benefit for the species. We have prepared a draft environmental action statement (EAS) for our preliminary determination that the SHA and permit decision may be eligible for categorical exclusion under the National Environmental Policy Act (43 U.S.C. 4321 *et seq.*; NEPA). We invite the public to review and comment on the permit application, draft SHA, and the draft EAS.

Background

SHAs are intended to encourage private or other non-Federal property owners to implement beneficial conservation actions for species listed under the ESA. SHA permit holders are assured that they will not be subject to increased property use restrictions as a result of their proactive actions to benefit listed species. Incidental take of listed species is authorized under a SHA permit pursuant to the provisions of section 10(a)(1)(A) of the ESA. For an applicant to receive a permit through an SHA, the applicant must submit an application form that includes the following:

(1) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(2) A description of how incidental take of the listed species pursuant to the SHA is likely to occur, both as a result of management activities and as a result of the return to baseline; and

(3) A description of how the SHA complies with the requirements of the Service's Safe Harbor policy.

For the Service to issue a permit, we must determine that:

(1) The take of listed species will be incidental to an otherwise lawful activity and will be in accordance with the terms of the SHA;

(2) The implementation of the terms of the SHA is reasonably expected to provide a net conservation benefit to the covered species by contributing to its recovery, and the SHA otherwise complies with the Service's Safe Harbor Policy (64 FR 32717, June 17, 1999);

(3) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(4) Implementation of the terms of the SHA is consistent with applicable Federal, state, and tribal laws and regulations;

(5) Implementation of the terms of the SHA will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(6) The applicant has shown capability for and commitment to implementing all of the terms of the SHA.

The Service's Safe Harbor Policy (64 FR 32717) and the Safe Harbor Regulations (68 FR 53320, 69 FR 24084) provide important terms and concepts for developing SHAs. The Service's Safe Harbor policy and regulations are available at the following website: <http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html>.

Proposed Action

The applicant has submitted a draft SHA for the TCB that covers approximately 1,105 acres of land (enrolled property) in Clallam County, Washington. The enrolled property is primarily operated as a commercial lavender and berry farm ("u-pick farm"), and a private recreational area and homestead. There are also some non-agricultural areas of mowed grasslands, marsh, and forest.

The applicant worked closely with the Service to establish the baseline and develop the SHA. Habitat surveys for the TCB have shown there are 40.5 acres of TCB baseline habitat within the enrolled property. The baseline habitat contains three habitat types: Upland grass and forb occupied by the covered species (15.3 acres), and a buffer consisting of emergent marsh/wetland (18.7 acres) and beach upland (6.5 acres). For specific details about baseline conditions, see the draft SHA.

Within the 40.5 acres, the applicant will perform habitat management activities for the benefit of the TCB. Within the area occupied by the TCB, the applicant will maintain and potentially enhance habitat. This will include annual hand removal of Scotch broom (*Cytisus scoparius*) until it is considered eradicated. Additional non-desirable vegetation may also be removed if necessary. Plantings of certain vegetation to benefit the TCB may also occur. The applicant will maintain fencing and signage to impede illegal public trespass onto baseline habitat.

The applicant will conduct annual surveys of the TCB during its flight period and also monitor the status of baseline habitat relative to the metrics described in the SHA. Additional monitoring will also include observations regarding public access, describing any research and data collection, and any emerging issues that could influence the success of the SHA. The applicant will monitor and report in years 1, 3, and 5 of the SHA, and every 3 years thereafter (except for adult TCB surveys, which will be conducted annually).

These activities will require the applicant to enter habitat occupied by the TCB as needed over the course of the year, but mainly during the spring flight season for the TCB. Depending on the timing, these activities could result in take of TCB larva and possibly adult butterflies, mainly as a result of inadvertent trampling. Continued removal of Scotch broom and other invasive plant species and the planting of target host plants could result in temporary disturbance of TCB habitat and also result in take if TCB is present in the affected areas. The timing and extent of these activities will occur in a manner to minimize incidental take. There is also a low potential for take of TCB to occur within other areas of the property as a result of interactions between agricultural activities and adult butterflies. Examples of the potential for incidental take include inadvertent harm during routine agricultural operations, mainly associated with annual seeding (plowing and disking) of barley, mowing lawns, moving and replacing irrigation lines, and managing and harvesting berries.

National Environmental Policy Act Compliance

The development of the draft SHA and the proposed issuance of an enhancement of survival permit is a Federal action that triggers the need for compliance with the NEPA (42 U.S.C. 4321 *et seq.*). We have prepared a draft

EAS to analyze the impacts of permit issuance and implementation of the SHA on the human environment in comparison to the no-action alternative. We have made a preliminary determination that issuing the permit and implementing the SHA would have minor or negligible impacts to the environment, and thus the proposed SHA and permit actions are eligible for categorical exclusion under NEPA. The basis for our preliminary determination is contained in the EAS, which is available for public review (see **ADDRESSES**).

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, new information, or comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party via this notice on our proposed Federal action.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, 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. All comments received from organizations, businesses, or individuals representing organizations or businesses are available for public inspection in their entirety. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our office (see **ADDRESSES**).

Next Step

The Service will evaluate the permit application, draft SHA, and public comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the ESA and NEPA regulations. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and full consideration of all comments received during the comment period. If we determine that all requirements are met, we will issue the applicant an enhancement of survival permit under section 10(a)(1)(A) of the ESA.

Authority

We provide this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Theresa E. Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2017-28490 Filed 1-3-18; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2017-0095; FXIA16710900000-178-FF09A30000]

Endangered Species Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities. The ESA also requires that we invite public comment before issuing these permits.

DATES: We must receive comments by February 5, 2018.

ADDRESSES: *Document availability:* The applications, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-HQ-IA-2017-0095 at <http://www.regulations.gov>.

Submitting Comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-IA-2017-0095.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-HQ-IA-2017-0095; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

When submitting comments, please indicate the name of the applicant and the PRT# at the beginning of your comment. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us

(see **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: Joyce Russell, 703-358-2280.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods listed under *Submitting Comments* in the **ADDRESSES** section. We will not consider comments sent by email or fax, or to an address not in the **ADDRESSES** section.

Please make your requests or comments as specific as possible, confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES** or comments delivered to an address other than those listed above in **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

C. Who will see my comments?

If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted

on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA), we invite public comment on these permit applications before final action is taken.

III. Permit Applications

We invite the public to comment on applications to conduct certain activities with endangered species. With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

Applicant: Lacy James Harber, Denison, TX; PRT-31792C

The applicant requests a permit to import the sport-hunted trophy of one male black rhinoceros (*Diceros bicornis*) from Namibia for the purpose of enhancing the propagation or survival of the species. This notification covers a single import conducted by the applicant.

Applicant: Miami-Dade Zoological Park and Gardens, Miami, FL; PRT-42528C

The applicant requests a permit to export one captive-born giant otter (*Pteronura brasiliensis*) to Emperor Valley Zoo, Trinidad and Tobago, to enhance the propagation or survival of the species. This notification is for a single export.

Applicant: Federico Zannini, Royal Oak, MI; PRT-58261C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT-57017C

The applicant requests a permit to import one Asian elephant (*Elephas maximus*) from the Melbourne Zoo, Australia, to enhance the propagation of the species. This notification is for a single import.

Applicant: Saint Louis Zoo, Saint Louis, MO; PRT-62698C

The applicant requests a permit to import blood and swab samples from Galapagos tortoises from three locations in the Galapagos Islands, Ecuador, for scientific research. This notification covers activities to be conducted by the applicant over a 3-year period.

Applicant: Lolo Kwong, Temple City, CA; PRT-60612C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of Cincinnati, Cincinnati, OH; PRT-681252

The applicant requests renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Cheetah (*Acinonyx jubatus*), blue-throated macaw (*Ara glaucogularis*), Aye-aye (*Daubentonia madagascariensis*), eastern black rhinoceros (*Diceros bicornis michaeli*), southern rockhopper penguin (*Eudyptes chrysocome*), black-footed cat (*Felis nigripes*), gorilla (*Gorilla gorilla*), red-crowned crane (Japanese or Manchurian crane) (*Grus japonensis*), white-handed gibbon (Lar gibbon) (*Hylobates lar*), ring-tailed lemur (*Lemur catta*), Brazilian ocelot (*Leopardus pardalis mitis*), Bali myna (Rothschild's starling) (*Leucopsar rothschildi*), African painted dog (*Lycaon pictus*), Japanese macaque (snow monkey) (*Macaca fuscata fuscata*), clouded leopard (*Neofelis nebulosa*), pygmy loris (*Nycticebus pygmaeus*), bonobo (pygmy chimpanzee) (*Pan paniscus*), African lion (*Panthera leo melanochaita*), Malayan tiger (*Panthera tigris jacksoni*), Sumatran orangutan (*Pongo abelii*), Coquerel's Sifaka (*Propithecus coquereli*), Indian rhinoceros (greater one-horned rhinoceros) (*Rhinoceros unicornis*), African penguin (Black-footed penguin) (*Spheniscus demersus*), Siamang (*Symphalangus syndactylus*), snow leopard (*Panthera uncia*), and Andean condor (*Vultur gryphus*). This notification covers activities to be conducted by the applicant over a 5-year period.

Museum Applicants:

Smithsonian Institution/National Museum of Natural History, Washington, DC; PRT-125284

The applicant requests the renewal of their permit to export and reimport nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Northeastern University/Ocean Genome Legacy Center, Nahant, MA; PRT-58260C

The applicant requests a permit to export and reimport nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Trophy applicants:

Each applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Ronald E. Rhodes, Columbus, TX; PRT-61783C

Applicant: Daniel J. Nordin, Elm Grove, WI; PRT-58895C

Applicant: Donald E. Southorn, Wyoming, MI; PRT-59677C

Applicant: Jacob A. Ankele, Rapid City, SD; PRT-58530C

Applicant: Jason Thomas Parsons, Birmingham, AL; PRT-58231C

Applicant: Christian A. Fast, Prairieville, LA; PRT-59019C

Applicant: Ray A. Potts, Wisdom, MT; PRT-62604C

Applicant: Dana L. Johnston, Washington, PA; PRT-58226C

Applicant: Milak Pomares, Miami, FL; PRT-58906C

Applicant: Edwin J. Whitney, San Antonio, TX; PRT-60580C

Applicant: Jerry E. Copeland Salado, TX; PRT-53908C

IV. Next Steps

If the Service decides to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the **Federal Register** notice announcing the

permit issuance date by searching in www.regulations.gov under the permit number listed in this document (e.g., PRT-12345c).

V. Authority

Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Joyce Russell,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2017-28498 Filed 1-3-18; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17XL.LLIDT03100.L17110000.
DF0000.241A00; 4500109142]

Notice of Availability of Record of Decision for the Craters of the Moon National Monument and Preserve Monument Management Plan Amendment, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Monument Management Plan (MMP) for the Craters of the Moon National Monument and Preserve located in south-central Idaho. The Idaho State Director signed the ROD on July 31, 2017, which constitutes the final decision of the BLM and makes the Approved MMP effective immediately.

ADDRESSES: Copies of the ROD/ Approved MMP are available upon request from the Monument Manager, Shoshone Field Office, Bureau of Land Management, 400 West F St., Shoshone, ID 83352, or online at <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/idaho/craters-of-moon>. Copies of the ROD/ Approved MMP are available for public inspection at the Shoshone Field Office.

FOR FURTHER INFORMATION CONTACT: Holly Crawford, BLM Monument Manager, telephone 208-732-7200; address 400 West F Street, Shoshone, ID 83352; email hcrawford@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to to leave a message or question for Ms. Crawford. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Craters of the Moon National Monument and Preserve (hereafter, Monument) Approved Management Plan Amendment and Record of Decision (MMPA/ROD) are now available. The BLM prepared this document in consultation with Cooperating Agencies and in accordance with the National Environmental Policy Act of 1969, as amended, the Federal Land Policy and Management Act of 1976, as amended (FLPMA), implementing regulations, the BLM Land Use Planning Handbook (H-1601-1), the BLM National Environmental Policy Act Handbook (H-1790-1), and other applicable law and policy, including Instruction Memorandum No. 2016-105—Land Use Planning and Environmental Policy Act Compliance within Greater Sage-Grouse Approved Resource Management Plans and Plan Amendments Decision Area.

The planning area comprises about 753,200 acres of land, which includes 275,100 acres managed by the BLM Shoshone, Burley, and Upper Snake Field Offices. Based on analysis in the Final Environmental Impact Statement (EIS) for the project, the MMP is amended and will guide livestock grazing management on BLM-managed public lands within the Monument into the future.

The Monument is part of the BLM's National Conservation Lands system and is jointly managed with the National Park Service. This Monument was created in 1924 and expanded to its current acreage in 2000.

The BLM completed a Final EIS to determine the appropriate management of livestock grazing on approximately 275,100 acres of BLM-administered lands within the Monument. This Final EIS analyzed management options not previously addressed by the 2007 MMP as amended by the 2015 Sage-Grouse Approved Resource Management Plan Amendment (ARMPA). This Approved MMPA/ROD amends the 2007 plan but will not amend the ARMPA. Among the most important decisions the BLM made through this plan amendment are which lands should be available for livestock grazing and with what protections for Greater sage-grouse and their sagebrush habitat.

The purpose of this Approved MMPA/ROD is to make the 2007 MMP's grazing management direction consistent with current laws, regulations, and policies regarding Greater sage-grouse habitat conservation. More specifically, it considers a range of FLPMA-compliant management options for livestock grazing and Greater sage-grouse on BLM-managed lands in the planning

area in a manner that maintains the Monument values identified in Proclamation 7373. In addition, this Approved MMPA/ROD is needed to cure deficiencies in the 2007 MMP/EIS identified by the U.S. District Court for Idaho. The Court found that BLM had failed to adequately address current science and the agency's policies designed to protect sage-grouse habitat, primarily with regard to managing livestock grazing in the Monument.

After the 2007 MMP/EIS was signed, the Greater sage-grouse was deemed warranted for listing, but was precluded from the Threatened and Endangered Species list. More recently, the BLM completed the Greater Sage-Grouse Approved Resource Plan ARMPA for Idaho and Southwestern Montana, which resulted in a determination that listing the Greater sage-grouse was not warranted. The ARMPA amended the 2007 MMP/EIS, thereby addressing several of the deficiencies identified by the Court with regard to Greater sage-grouse conservation in the Monument.

The Final EIS for this plan amendment, prepared after release of the 2015 ARMPA, analyzed five alternatives that provide a range of livestock grazing availability and sage-grouse protections. Alternative C is the BLM's selected alternative.

Alternative A is the No Action alternative, which would continue the management established in the 2007 MMP/EIS. Under this alternative, 273,900 acres would be available for livestock grazing, with 38,187 animal unit months (AUMs) available.

Alternative B would reduce AUMs by 75 percent and close 5 areas to grazing: Little Park kipuka (an island of older land surrounded by lava flows), the North Pasture of Laidlaw Park Allotment, Larkspur Park kipuka, the North Pasture of Bowl Crater Allotment, and Park Field kipuka. This alternative would adjust two allotment boundaries and make 21,000 acres unavailable for livestock grazing for the protection of sage-grouse and other Monument values.

Alternative C, the Approved Plan, makes 273,600 acres available for livestock grazing and adjusts two allotment boundaries, which would set the maximum number of AUMs at 37,792. Where appropriate, livestock grazing will be used as a tool to improve and/or protect wildlife habitat. Guidelines for livestock grazing management will be set based on vegetation and wildlife habitat conditions and needs identified in the 2007 MMP and current agency guidance.

Alternative D would eliminate livestock grazing from BLM-managed lands within the Monument boundary and adjust two allotment boundaries. All livestock-related developments would be removed, and some fences would be required to exclude livestock from the Monument.

Alternative E would reduce AUMs by approximately 50 percent and close Larkspur Park kipuka to grazing. This alternative would adjust two allotment boundaries and make 272,800 acres available for grazing. No net gain in livestock-related infrastructure would be allowed.

The land use planning process was initiated on June 28, 2013, through a Notice of Intent published in the **Federal Register** (78 FR 39009), notifying the public of a formal scoping period and soliciting public participation in the planning process. Four scoping meetings were held in July 2013 in the communities of Arco, Carey, Rupert, and American Falls. During the scoping period the public provided the BLM with input on relevant issues to consider in the planning process. Based on this input and the BLM's goals and objectives, the five alternatives described above were formulated for consideration and analysis in the Draft EIS. Because Area of Critical Environmental Concern (ACEC) nominations were previously analyzed in the 2007 MMP/EIS, no new ACEC nominations were solicited during scoping.

Comments on the Draft EIS received from the public, Cooperating Agencies, and through internal BLM review were considered and incorporated as appropriate into the Proposed Plan and Final EIS, published on May 26, 2017 (82 FR 24387). Public comments on the Draft EIS resulted in the addition of clarifying text but did not significantly change proposed land use plan decisions.

Two protests were received on the Final EIS, and the issues raised have been resolved. As a result, only minor editorial modifications were made in preparing the Approved MMPA. These modifications provided further clarification of some of the decisions. The Idaho Governor's consistency review identified that the ARMPA is inconsistent with the State of Idaho Sage Grouse Plan but identified no inconsistencies with the Approved MMPA. The Approved MMPA/ROD are in compliance with the current BLM policy on mitigation, but because the management actions are programmatic in nature, the mitigation hierarchy (avoid, minimize, or compensate) will be applied during site-specific NEPA

analysis at the implementation stage following the ROD.

Authority: 40 CFR 1506.6.

Peter J. Ditton,

Acting BLM Idaho State Director.

[FR Doc. 2017-28392 Filed 1-3-18; 8:45 am]

BILLING CODE 4310-AK-P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS-WASO-NRNL-24753;
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 December 9, 2017, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by January 19, 2018.

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 December 9, 2017. 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:

ILLINOIS

Bureau County

Princeton North Main Street Historic District, Primarily 900–1000 blks. of N Main & 000

blk. of W Long Sts., Princeton, SG100001968

Princeton South Main Street—Courthouse Square Historic District, Primarily 500 & 600 blks. of S Main St. & Courthouse Sq., Princeton, SG100001969

Cook County

Promontory Point, 5491 S Shore Dr., Chicago, SG100001970

IOWA

Clarke County

Osceola Commercial Historic District, S Fillmore, N & S Main, E & W Jefferson & E & W Washington Sts., Osceola, SG100001971

Scott County

Davenport Bag and Paper Company Building, 301 E 2nd St., Davenport, SG100001972

MINNESOTA

Hennepin County

Northrop Mall Historic District, Roughly bounded by Pillsbury Drive SE, E River, & Union & Delaware Sts. SE, Minneapolis, SG100001973

Ramsey County

Schmidt, Jacob, Brewing Company Historic District, Roughly bounded by line between Lots 17 & 18 of Stinson & Ramsey's subdiv., W James Ave, Toronto & W Jefferson Sts., St Paul, SG100001974

PENNSYLVANIA

Allegheny County

Boys' Club of Pittsburgh, 212 45th St., Pittsburgh, SG100001976

UTAH

Carbon County

Great Hunt Panel, The, (Nine Mile Canyon, Utah MPS), Nine Mile Canyon Rd., Price vicinity, MP100001978

Davis County

Layton Oregon Short Line Railroad Station, 200 S Main St., Layton, SG100001979

Salt Lake South East and North West Base Monuments (Salt Lake Base Line), 1002 S 3200 West & 209 South 4500 West, Layton vicinity, SG100001980

Utah County

Coddington, Thomas and Elizabeth, House, (American Fork, Utah MPS), 190 North 300 East, American Fork, MP100001982

Herbert, James and Emily, House, (American Fork, Utah MPS), 388 W Main St., American Fork, MP100001983

Singleton, Robert and Mary Ann, House, (American Fork, Utah MPS), 740 East 40 South, American Fork, MP100001984

Singleton, Thomas and Eliza Jane, House, (American Fork, Utah MPS), 778 East 50 South, American Fork, MP100001985

A request for removal has been made for the following resource:

SOUTH DAKOTA**Miner County**

Wheeler Hotel, 101 N. Main St.,

Additional documentation has been received for the following resource:

MINNESOTA**Ramsey County**

Church of St. Casimir—Catholic, 937 E. Jessamine Ave., St. Paul, AD83000939

Authority: 60.13 of 36 CFR part 60

Dated: December 13, 2017.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program and
Keeper, National Register of Historic Places.*

[FR Doc. 2017-28467 Filed 1-3-18; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. DEA-392]

Bulk Manufacturer of Controlled Substances Application: Organix, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 5, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 6, 2017, Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01801 applied to be registered as a bulk

manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Lysergic acid diethylamide.	7315	I
Marihuana	7360	I
Tetrahydrocannabinols ...	7370	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
Heroin	9200	I
Morphine	9300	II

The company plans to manufacture reference standards for distribution to its research and forensic customers. In reference to drug code 7360 (marihuana) and 7370 (THC) the company plans to manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Dated: December 20, 2017.

Demetra Ashley,

Acting Assistant Administrator.

DC:

DCX:

Return to ODW—Mike Lewis

DCX:

DR:

DRX:

DRW:

DRW Policy Analyst:

DRG:

DRG/A:

DRGR Unit Chief:

DRQ:

DRGR Staff Coordinator

DRGR—L.Mckoy 10/25/2017

NOA—ORGANIX INC

Document#: DRGR-17-0306

DFN: 010.02.A1 General

Correspondence

DFN: 301-04 **Federal Register** Files

[FR Doc. 2017-28180 Filed 1-3-18; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. DEA-392]

Importer of Controlled Substances Application: Sharp (Bethlehem), LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the

issuance of the proposed registration on or before February 5, 2018. Such persons may also file a written request for a hearing on the application pursuant on or before February 5, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 15, 2017, Sharp (Bethlehem), LLC, 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
3,4-Methylenedioxy methamphetamine.	7405	I
Psilocybin	7437	I

The company plans to import the listed controlled substances for clinical trials. No other activity for these drug codes is authorized for this registration. Approval of permits applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-

approved finished dosage forms for commercial sale.

Dated: December 28, 2017.

Neil D. Doherty,

Deputy Assistant Administrator.

[FR Doc. 2017-28471 Filed 1-3-18; 8:45 am]

BILLING CODE 4410-09-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.

Name of Committee: Advisory Board.

General Function of the Committee:

To aid the National Institute of Corrections in developing long-range plans, advise on program development, and to support 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: 8:30 a.m. to 12:00 p.m. on Thursday, January 25, 2018, 8:30 a.m. to 12:00 p.m. on Friday, January 26, 2018.

Location: National Institute of Corrections, 500 First Street NW, 2nd 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 the mornings of January 25 and 26, 2018, the Advisory Board will discuss/address the following topics: (1) Agency Report from the NIC Acting Director, (2) briefings on current activities and future goals, and (3) updates from partner agencies and associations.

Procedure: Then January 25 and 26, 2018 meetings are open to the public. Interested persons may present data, information or views, orally or in writing, on issues pending before the committee. Oral presentations from the public will be scheduled between approximately 11:15 a.m. to 11:30 a.m. on January 25, 2018 and between 11:15 a.m. and 11:30 a.m. on January 26, 2018. 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 January 19, 2018.

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. 2017-28121 Filed 1-3-18; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Investment Advice Participants and Beneficiaries

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Investment Advice Participants and Beneficiaries," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 5, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201711-1210-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Investment Advice Participants and Beneficiaries information collection. The regulatory provision contains the following information collection requirements: (1) A fiduciary adviser must furnish an initial disclosure that provides detailed information to participants about an advice arrangement before initially providing investment advice; (2) a fiduciary adviser must annually engage an independent auditor to audit the investment advice arrangement for compliance with the regulation; (3) if the fiduciary adviser provides the investment advice through the use of a computer model, then—before providing the advice—the fiduciary adviser must obtain a written certification from an eligible investment expert as to the computer model's compliance with certain standards (*e.g.*, applies generally accepted investment theories, unbiased operation, and objective criteria) set forth in the regulation; and (4) a fiduciary adviser must maintain records with respect to the investment advice provided in reliance on the regulation necessary to determine whether the applicable requirements of the regulation have been satisfied. Employee Retirement Income Security Act (ERISA) of 1974 sections 408(b)(14) and 408(g) authorizes this information collection. See 29 U.S.C. 1108(b)(14), 1108(g).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally 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 generally 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. The DOL obtains OMB approval for this information collection under Control Number 1210-0134.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2017 (82 FR 23303).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0134. The OMB is particularly interested in comments that:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-EBSA.

Title of Collection: Investment Advice Participants and Beneficiaries.

OMB Control Number: 1210-0134.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 9,946.

Total Estimated Number of Responses: 21,501,930.

Total Estimated Annual Time Burden: 2,340,981 hours.

Total Estimated Annual Other Costs Burden: \$278,939,750.

Authority: 44 U.S.C. 3507(a)(1)(D).

Seleda Perryman,

Assistant Departmental Clearance Officer.

[FR Doc. 2017-28444 Filed 1-3-18; 8:45 am]

BILLING CODE 4510-29-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017-23, MC2018-87 and CP2018-129; MC2018-88 and CP2018-130; MC2018-89 and CP2018-131; MC2018-90 and CP2018-132; MC2018-91 and CP2018-133; MC2018-92 and CP2018-134; MC2018-93 and CP2018-135; MC2018-94 and CP2018-136; MC2018-95 and CP2018-137; MC2018-96 and CP2018-138; MC2018-97 and CP2018-139; MC2018-98 and CP2018-140; MC2018-99 and CP2018-141; MC2018-100 and CP2018-142; MC2018-101 and CP2018-143; MC2018-102 and CP2018-144; MC2018-103 and CP2018-145; MC2018-104 and CP2018-146; MC2018-105 and CP2018-147; MC2018-106 and CP2018-148; MC2018-107 and CP2018-149; MC2018-108 and CP2018-150; MC2018-109 and CP2018-151]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 5, 2018, January 8, 2018, January 9, 2018, January 10, 2018, January 11, 2018, and January 12, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION: The January 5, 2018 comment due date applies to Docket Nos. MC2018-87 and CP2018-129; MC2018-88 and CP2018-130; MC2018-89 and CP2018-131.

The January 8, 2018 comment due date applies to Docket Nos. MC2018-90 and CP2018-132; MC2018-91 and CP2018-133; MC2018-92 and CP2018-134; MC2018-93 and CP2018-135; MC2018-94 and CP2018-136.

The January 9, 2018 comment due date applies to Docket Nos. CP2017-23; MC2018-95 and CP2018-137; MC2018-96 and CP2018-138; MC2018-97 and CP2018-139; MC2018-98 and CP2018-140.

The January 10, 2018 comment due date applies to Docket Nos. MC2018-99 and CP2018-141; MC2018-100 and CP2018-142; MC2018-101 and CP2018-143; MC2018-102 and CP2018-144; MC2018-103 and CP2018-145.

The January 11, 2018 comment due date applies to Docket Nos. MC2018-104 and CP2018-146; MC2018-105 and CP2018-147; MC2018-106 and CP2018-148; MC2018-107 and CP2018-149; MC2018-108 and CP2018-150.

The January 12, 2018 comment due date applies to Docket Nos. MC2018-109 and CP2018-151.

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- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent

with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*.: CP2017–23; *Filing Title*: USPS Notice of Change in Prices Pursuant to Amendment to Priority Mail Contract 250; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Christopher C. Mohr; *Comments Due*: January 9, 2018.

2. *Docket No(s)*.: MC2018–87 and CP2018–129; *Filing Title*: USPS Request to Add Priority Mail Express & Priority Mail Contract 57 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Kenneth R. Moeller; *Comments Due*: January 5, 2018.

3. *Docket No(s)*.: MC2018–88 and CP2018–130; *Filing Title*: USPS Request to Add Priority Mail Express & Priority Mail Contract 58 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Kenneth R. Moeller; *Comments Due*: January 5, 2018.

4. *Docket No(s)*.: MC2018–89 and CP2018–131; *Filing Title*: USPS Request to Add Priority Mail Express & Priority Mail Contract 59 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Jennaca D. Upperman; *Comments Due*: January 5, 2018.

5. *Docket No(s)*.: MC2018–90 and CP2018–132; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 32 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Jennaca D. Upperman; *Comments Due*: January 8, 2018.

6. *Docket No(s)*.: MC2018–91 and CP2018–133; *Filing Title*: USPS Request to Add Priority Mail Express Contract 58 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Christopher C. Mohr; *Comments Due*: January 8, 2018.

7. *Docket No(s)*.: MC2018–92 and CP2018–134; *Filing Title*: USPS Request to Add Priority Mail Express Contract 59 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Christopher C. Mohr; *Comments Due*: January 8, 2018.

8. *Docket No(s)*.: MC2018–93 and CP2018–135; *Filing Title*: USPS Request to Add Priority Mail Express Contract 60 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Christopher C. Mohr; *Comments Due*: January 8, 2018.

9. *Docket No(s)*.: MC2018–94 and CP2018–136; *Filing Title*: USPS Request to Add Priority Mail & First-Class Package Service Contract 71 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Lawrence Fenster; *Comments Due*: January 8, 2018.

10. *Docket No(s)*.: MC2018–95 and CP2018–137; *Filing Title*: USPS Request to Add Priority Mail & First-Class Package Service Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Lawrence Fenster; *Comments Due*: January 9, 2018.

11. *Docket No(s)*.: MC2018–96 and CP2018–138; *Filing Title*: USPS Request to Add Priority Mail & First-Class Package Service Contract 73 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Natalie R. Ward; *Comments Due*: January 9, 2018.

12. *Docket No(s)*.: MC2018–97 and CP2018–139; *Filing Title*: USPS Request to Add First-Class Package Service Contract 91 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December

27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Natalie R. Ward; *Comments Due*: January 9, 2018.

13. *Docket No(s)*.: MC2018–98 and CP2018–140; *Filing Title*: USPS Request to Add Priority Mail Contract 403 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Matthew R. Ashford; *Comments Due*: January 9, 2018.

14. *Docket No(s)*.: MC2018–99 and CP2018–141; *Filing Title*: USPS Request to Add Priority Mail Contract 404 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Matthew R. Ashford; *Comments Due*: January 10, 2018.

15. *Docket No(s)*.: MC2018–100 and CP2018–142; *Filing Title*: USPS Request to Add Priority Mail Contract 405 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Matthew R. Ashford; *Comments Due*: January 10, 2018.

16. *Docket No(s)*.: MC2018–101 and CP2018–143; *Filing Title*: USPS Request to Add Priority Mail Contract 406 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Michael L. Leibert; *Comments Due*: January 10, 2018.

17. *Docket No(s)*.: MC2018–102 and CP2018–144; *Filing Title*: USPS Request to Add Priority Mail Contract 407 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Michael L. Leibert; *Comments Due*: January 10, 2018.

18. *Docket No(s)*.: MC2018–103 and CP2018–145; *Filing Title*: USPS Request to Add Priority Mail Contract 408 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 27, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Curtis E. Kidd; *Comments Due*: January 10, 2018.

19. *Docket No(s)*.: MC2018–104 and CP2018–146; *Filing Title*: USPS Request to Add Priority Mail Contract 409 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing*

Acceptance Date: December 27, 2017;
Filing Authority: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Curtis E. Kidd;
Comments Due: January 11, 2018.

20. *Docket No(s).*: MC2018–105 and CP2018–147; *Filing Title:* USPS Request to Add Priority Mail Contract 410 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Curtis E. Kidd;
Comments Due: January 11, 2018.

21. *Docket No(s).*: MC2018–106 and CP2018–148; *Filing Title:* USPS Request to Add Priority Mail Contract 411 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Gregory Stanton;
Comments Due: January 11, 2018.

22. *Docket No(s).*: MC2018–107 and CP2018–149; *Filing Title:* USPS Request to Add Priority Mail Contract 412 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Gregory Stanton;
Comments Due: January 11, 2018.

23. *Docket No(s).*: MC2018–108 and CP2018–150; *Filing Title:* USPS Request to Add Priority Mail Contract 413 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Katalin K. Clendenin;
Comments Due: January 11, 2018.

24. *Docket No(s).*: MC2018–109 and CP2018–151; *Filing Title:* USPS Request to Add Priority Mail Contract 414 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 27, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Katalin K. Clendenin;
Comments Due: January 12, 2018.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,
Acting Secretary.

[FR Doc. 2017–28441 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[**Docket Nos. MC2018–110 and CP2018–152; MC2018–111 and CP2018–153; MC2018–112 and CP2018–154; MC2018–113 and CP2018–155; MC2018–114 and CP2018–156; MC2018–115 and CP2018–157; MC2018–116 and CP2018–158; MC2018–117 and CP2018–159; MC2018–118 and CP2018–160; CP2018–161; MC2018–119 and CP2018–162; MC2018–120 and CP2018–163]**

New Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 12, 2018, January 16, 2018, and January 17, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The January 12, 2018 comment due date applies to Docket Nos. MC2018–110 and CP2018–152; MC2018–111 and CP2018–153; MC2018–112 and CP2018–154; MC2018–113 and CP2018–155.

The January 16, 2018 comment due date applies to Docket Nos. MC2018–114 and CP2018–156; MC2018–115 and CP2018–157; MC2018–116 and CP2018–158; MC2018–117 and CP2018–159; MC2018–118 and CP2018–160.

The January 17, 2018 comment due date applies to Docket Nos. CP2018–161; MC2018–119 and CP2018–162; MC2018–120 and CP2018–163.

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product

currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).*: MC2018–110 and CP2018–152; *Filing Title:* USPS Request to Add Priority Mail Contract 415 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Jennaca D. Upperman;
Comments Due: January 12, 2018.

2. *Docket No(s).*: MC2018–111 and CP2018–153; *Filing Title:* USPS Request to Add Priority Mail Contract 416 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Jennaca D. Upperman;
Comments Due: January 12, 2018.

3. *Docket No(s).*: MC2018–112 and CP2018–154; *Filing Title:* USPS Request to Add Priority Mail Contract 417 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing*

Acceptance Date: December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Lawrence Fenster; *Comments Due:* January 12, 2018.

4. *Docket No(s).*: MC2018–113 and CP2018–155; *Filing Title:* USPS Request to Add Priority Mail Express Contract 61 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Natalie R. Ward; *Comments Due:* January 12, 2018.

5. *Docket No(s).*: MC2018–114 and CP2018–156; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 60 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Kenneth R. Moeller; *Comments Due:* January 16, 2018.

6. *Docket No(s).*: MC2018–115 and CP2018–157; *Filing Title:* USPS Request to Add Priority Mail Express & First-Class Package Service Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Kenneth R. Moeller; *Comments Due:* January 16, 2018.

7. *Docket No(s).*: MC2018–116 and CP2018–158; *Filing Title:* USPS Request to Add Priority Mail Contract 418 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Lawrence Fenster; *Comments Due:* January 16, 2018.

8. *Docket No(s).*: MC2018–117 and CP2018–159; *Filing Title:* USPS Request to Add Priority Mail Contract 419 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Timothy J. Schwuchow; *Comments Due:* January 16, 2018.

9. *Docket No(s).*: MC2018–118 and CP2018–160; *Filing Title:* USPS Request to Add Priority Mail Contract 420 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Timothy J. Schwuchow; *Comments Due:* January 16, 2018.

10. *Docket No(s).*: CP2018–161; *Filing Title:* Notice of the United States Postal

Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3015.5; *Public Representative:* Natalie R. Ward; *Comments Due:* January 17, 2018.

11. *Docket No(s).*: MC2018–119 and CP2018–162; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 61 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Christophe C. Mohr; *Comments Due:* January 17, 2018.

12. *Docket No(s).*: MC2018–120 and CP2018–163; *Filing Title:* USPS Request to Add Priority Mail Express & First-Class Package Service Contract 2 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 28, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Katalin K. Clendenin; *Comments Due:* January 17, 2018.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,
Acting Secretary.

[FR Doc. 2017–28477 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 420 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2018–118, CP2018–160.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2017–28452 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 61 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–119, CP2018–162.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2017–28457 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. 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 December 28,

2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 61 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–113, CP2018–155.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28455 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT:
Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 60 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–114, CP2018–156.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2017–28456 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT:
Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 418 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–116, CP2018–158.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2017–28450 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT:
Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 419 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–117, CP2018–159.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2017–28451 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT:
Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 416 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–111, CP2018–153.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2017–28448 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT:
Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & First-Class Package Service Contract 2 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–120, CP2018–163.

Elizabeth A. Reed,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2017–28459 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & First-Class Package Service Contract 1 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–115, CP2018–157.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28458 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 417 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–112, CP2018–154.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28449 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. 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 December 28, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 415 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–110, CP2018–152.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–28447 Filed 1–3–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82422; File No. SR–ICEEU–2017–014]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Clearing Rules and Procedures for Indirect Clearing

December 29, 2017.

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 December 18, 2017, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to amend ICE

Clear Europe's Rules, Clearing Procedures and CDS Procedures to implement certain requirements relating to indirect clearing and other matters under applicable European Union regulations.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

The purpose of the proposed changes is to amend the Rules,³ Clearing Procedures and CDS Procedures to implement certain requirements under the European Union Markets in Financial Instruments Directive (“MiFID II”)⁴ and Markets in Financial Instruments Regulation (“MiFIR”),⁵ and related implementing regulations and technical standards,⁶ relating to indirect clearing and certain other matters as discussed herein. The relevant requirements under MiFID II and MiFIR will take effect on January 3, 2018.

Indirect Clearing

The European Market Infrastructure Regulation (“EMIR”)⁷ and technical

³ Capitalized terms used but not defined herein have the meanings specified in the Rules.

⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

⁵ Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012.

⁶ Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements (the “MiFIR RTS”) and Commission Delegated Regulation (EU) No. 149/2013, together with the amendments set out in Regulation (EU) 2017/2155 of 22 September 2017 amending Delegated Regulation (EU) No. 149/2013 with regard to regulatory technical standards on indirect clearing arrangements (the “EMIR RTS”).

⁷ Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

standards thereunder⁸ impose certain standards for indirect clearing arrangements for OTC derivatives clearing. MiFID II and MiFIR, and the related implementing regulations, extend this concept to exchange-traded derivatives, and relevant EMIR technical standards are being simultaneously recast for consistency. In general, “indirect clearing” for this purpose refers to arrangements in which an entity that is itself a customer of a clearing member in turn is clearing for one or more of its own customers (“indirect clients”), as well as longer chains involving additional intermediaries.⁹ The new technical standards under EMIR, MiFIR and MiFID II¹⁰ have the objective that indirect clearing arrangements do not increase counterparty risk and that the assets and positions of the indirect client benefit from protections equivalent to those provided under EMIR for direct clients of a clearing member.¹¹

The new MiFID II requirements impose segregation obligations on direct clients that provide indirect clearing, as well as on clearing organizations and clearing members directly. Clearing members are required to open and maintain specific types of separate accounts (referred to as standard omnibus indirect accounts and gross omnibus indirect accounts), at clearing member level, for assets and positions held by their direct clients on behalf of indirect clients.¹² (Standard omnibus indirect accounts are to be used to hold assets and positions of indirect clients on an omnibus basis, distinct from the accounts used for proprietary positions of the direct client. Gross omnibus indirect accounts provide a further level of segregation that enables the client (and clearing member) to distinguish the assets and positions of each indirect client.) CCPs in turn are required to open and maintain corresponding new forms of customer accounts for their clearing members, which are to be used to hold assets and positions of indirect clients of direct customers of the clearing member in standard omnibus

indirect accounts and gross omnibus indirect accounts, respectively.¹³

The amendments to the Rules and Clearing Procedures are designed to implement these new account type requirements at CCP level, while making certain allowances for FCM/BD Clearing Members in light of particular requirements of U.S. law, as discussed herein.

In Rule 101, new definitions for a series of customer account categories relating to indirect clients accessing the clearing house through Non-FCM/BD Clearing Members have been added: “Standard Omnibus Indirect Account for F&O,” “Standard TTFCOA Omnibus Indirect Account for F&O,” “Standard Omnibus Indirect Account for CDS,” “Standard TTFCOA Omnibus Indirect Account for CDS,” “Standard Omnibus Indirect Account for FX,” “Standard TTFCOA Omnibus Indirect Account for FX,” and “Segregated Gross Indirect Account” (collectively referred to herein as “indirect clearing accounts”). Appropriate references to these new account categories have been added throughout the definitions, including in the definitions of “Customer Account Category,” “Customer-CM CDS Transaction,” “Customer-CM F&O Transaction” and “Customer-CM FX Transaction”. A new definition of “Indirect Client” has been added, consistent with the regulatory definition. Conforming changes are also made in the definition of Margin-flow Co-mingled Account and Nominated Customer Bank Account to clarify that equivalent procedures apply. A reference to MiFID I, which is to be repealed effective January 2018, has been removed from the definitions, and in various other provisions of the Rules.

In Rules 102(f) and (g), conforming and clarifying changes are made to reflect the various customer account classes that may apply, in light of the additional indirect clearing accounts. Rule 102(g) is amended to require that Clearing Members, consistent with the MiFID II requirements, offer their Affected Customers with indirect clients the choice of a gross omnibus indirect account or a standard omnibus indirect account. The definition of “Affected Customer” in Rule 101 has been amended to address indirect clearing situations as well as direct clearing. As a result of this definition, Rule 102(g) does not impose an obligation to make the new indirect clearing accounts available in situations where applicable law in the relevant jurisdiction prevents or prohibits such accounts from being offered. As discussed in more detail

below, such limitations may, for example, apply to FCM/BD Clearing Members under applicable U.S. law.

In Rule 202(a)(xxi), the obligation of Clearing Members to provide certain information to ICE Clear Europe with respect to segregated customer accounts is amended to include the new indirect client accounts. Similarly, Rule 203(a)(xx), which limits use of title transfer accounts where the clearing member is subject to UK CASS segregation rules, is amended to cover the new title transfer account categories for indirect clients. Conforming changes are also made to Rule 207(d) to specify the customer account categories for Non-FCM/BD Clearing Members.

The amendments to Rule 302(a) incorporate the payment mechanics relating to segregated gross indirect accounts, in a manner similar to the approach used for Margin-flow Co-mingled Accounts. New paragraphs 302(a)(vii) and (viii) address payment of amounts owed by and to the clearing member in respect of segregated gross indirect accounts, respectively. Conforming and clarifying changes are made in other paragraphs of Rule 302.

Rule 401(o) is being amended to reflect the additional capacities through which a clearing member may enter into a contract for a customer account where the customer is providing indirect clearing services. The amendment distinguishes scenarios where the customer is acting for its own account from those where it is acting for the account of indirect clients. New subparagraphs (xiii)–(xviii) address the use of the indirect clearing accounts in various categories by Non-FCM/BD Clearing Members acting for customers that in turn are acting for one or more indirect clients. In such cases, the clearing member must designate whether the contract is for: (A) A segregated gross indirect account, if the customer has communicated to the clearing member that the indirect client has elected to use such an account; or (B) otherwise, the appropriate type of standard omnibus indirect account for F&O, CDS or FX. In either case the contract will be recorded by ICE Clear Europe in accordance with such designation.

Rule 503(k) has been amended to address transfer of Permitted Cover in respect of segregated gross indirect accounts, in a manner similar to the current treatment of Margin-flow Co-mingled Accounts. The amendments in particular address certain reporting required to be provided by the clearing member to the clearing house with respect to such Permitted Cover. Rule 504(c), which provides certain

⁸ Commission Delegated Regulation (EU) No. 149/2013.

⁹ Specifically, indirect clearing arrangements are defined under both the EMIR and MiFIR RTS as “the set of contractual relationships between providers and recipients of indirect clearing services provided by a client, an indirect client or a second indirect client.” Article 1(a) of MiFIR RTS; Article 1(1) of EMIR RTS.

¹⁰ For ease of reference, we refer to the relevant requirements of MiFID II, MiFIR, EMIR and technical standards thereunder discussed herein as “MiFID II” or “MiFID II requirements”.

¹¹ MiFIR Article 30.

¹² MiFIR RTS Article 4(2).

¹³ MiFIR RTS Article 4(4).

representations by clearing members concerning Permitted Cover they transfer to the clearing house, is amended in paragraph (v) to add a representation concerning compliance with obligations under MiFID II and other applicable laws to third parties (including with respect to receipt of assets from clients) and in paragraph (vi) to add references to the relevant classes of indirect client account.

Various changes have been made to Rule 904 to address default management involving indirect client accounts. Rule 904(m), which addresses the transfer process for certain classes of customer account, has been clarified to exclude segregated gross indirect accounts, which are covered in new Rule 904(w), discussed below. Rule 904(v) is being added to set out principles that will apply when ICEU is calculating the net sums on segregated gross indirect accounts of a defaulting clearing member or determining the amounts available to be transferred to a transferee clearing member in respect of such an account, in a manner similar to the calculation of net sums for Margin-flow Co-mingled Accounts. Rule 904(w) is being added to require that upon an event of default being declared in respect of a clearing member, ICEU commits to triggering the procedures for the transfer process for both margin and open contract positions recorded in segregated gross indirect accounts, subject to specified conditions similar to those for other account categories.

Rule 906(b), which provides that net sums will be determined separately in respect of each class of customer account, has been amended to reference the new classes of indirect client accounts, and to make certain other conforming changes. Pursuant to new Rule 907(n), ICEU will, if requested by a non-defaulting clearing member, transfer any contracts, margin or other permitted assets from a standard omnibus indirect account or segregated gross indirect account of that clearing member to a different standard omnibus indirect account or segregated gross indirect account of the same clearing member or will otherwise update the records relating to such an account to facilitate the management by the clearing member of the default of the customer or an indirect client.

References to relevant indirect clearing accounts have been added in Rule 1516(a), which imposes certain requirements on clearing members for customer accounts for CDS Contracts.

The CDS Standard Terms, the F&O Standard Terms and the FX Standard Terms have each been amended in a new paragraph 3(p), 3(q) and 3(p),

respectively, to provide that each customer or indirect client that has chosen individual segregation through usage of a margin-flow co-mingled account or segregated gross indirect account authorizes the clearing member to determine how the different classes of permitted assets should be transferred to ICEU in respect of the relevant account, for purposes of revised Rule 503(k) as discussed above. In addition, conforming references to the new indirect client accounts have been added.

The Clearing Procedures are also being amended to incorporate the new account categories, including a separate set of changes to address FCM/BD Clearing Members. As noted above, revised Rule 102(g) does not require clearing members to offer the new indirect client accounts where doing so would be inconsistent with relevant applicable law. In the case of FCM/BD Clearing Members, under the U.S. Commodity Exchange Act¹⁴ and U.S. Bankruptcy Code,¹⁵ segregation for customer account positions and assets is established on an omnibus basis by account class (U.S. futures, swaps, or non-U.S. futures) without distinguishing between clients and indirect clients (and without distinguishing among indirect clients). As a result, in the event of an FCM failure, all customers in the same account class (whether direct or indirect) share in the same pool of customer property for that account class. Because of this limitation on the ability to provide individual account segregation for indirect clients of customers of an FCM/BD Clearing Member, ICE Clear Europe is offering only a segregated form of position-keeping for indirect clients for such clearing members. Specifically, ICE Clear Europe will offer standard omnibus indirect accounts for FCM/BD Clearing Members that will be made available as position-keeping subaccounts of the existing customer accounts. Three such position-keeping subaccounts will be created, one linked to each of the FCM/BD Customer Accounts that use a gross margin model: The DCM Customer Account, the Swap Customer Account, and the Non-DCM/ Swap Customer Account.¹⁶

Each such subaccount can be used by FCM/BD Clearing Members to record positions of indirect clients of customers separately from positions of

direct customers, and thus facilitate segregation of indirect clients from direct clients in the event of a client default and related record-keeping, consistent with certain of the MiFID II requirements as regards indirect clearing. In the event of a clearing member default, however, ICE Clear Europe would manage the default, as under the current Rules, separately for each customer account class, including any indirect client subaccount within such class, consistent with the requirements of the Commodity Exchange Act and U.S. Bankruptcy Code as discussed above.¹⁷

Paragraph 2.3(3) of the Clearing Procedures is being amended to add the specific position-keeping subaccounts linked to the customer accounts for FCM/BD clearing members. In addition, Paragraphs 2.3(4) and 2.3(5) of the Clearing Procedures add the relevant position-keeping accounts for the new indirect client accounts for Non-FCM/BD Clearing Members. Conforming changes are added in paragraph 3.1 to reflect the corresponding margin accounts for the indirect client account categories. Conforming changes are made to the table of account categories following paragraph 3.2 of the Clearing Procedures.

Emission Allowances

Various Rule changes are proposed to address the consequence of emission allowances becoming a new class of “financial instrument” under MiFID II.¹⁸ This includes new definitions for “Emission Allowance” and “Emissions Registry” in Rule 101, as well as conforming changes to the definition of “Delivery Facility.” Various amendments have also been made to Part 12 of the Rules to address settlement finality with respect to transactions in Emission Allowances, which as a result of this designation become in-scope as transfer orders for purposes of the EU Settlement Finality Directive¹⁹ and UK Settlement Finality Regulations²⁰. Rule 1202 has been

¹⁷ Only a single type of indirect client subaccount per account class is being made available for FCM/BD Clearing Members. In light of the segregation requirements under applicable U.S. law, and the corresponding limitation on the ability to offer individual account segregation, ICE Clear Europe does not believe that offering additional subaccounts based on the gross omnibus indirect account model would provide additional benefits for indirect clients.

¹⁸ MiFID II, Annex 1, Section C(11).

¹⁹ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

²⁰ Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979). See also the UK Financial Services and Markets Act 2000

¹⁴ 7 U.S.C. 1 *et seq.*

¹⁵ Title 11, United States Code.

¹⁶ Notwithstanding this change, the Swap Customer Account is not currently available for use by FCM/BD Clearing Members for customer positions in CDS Contracts (including CDS Contracts that are security-based swaps).

amended to introduce the concept of delivery orders for Emission Allowances for purposes of the application of Settlement Finality Regulations. Rule 1203(j) has been added to address the timing as of which Emission Allowance Delivery Orders become irrevocable. Rule 1204(i) has been added to address cancellation of such Delivery Orders prior to becoming irrevocable. Rule 1205(g) addresses satisfaction of such Delivery Orders. Certain other clarifying and conforming changes are made in Rules 1202(a)(iii), 1203(i) and 1204(a) and 1204(d).

Straight-Through Processing

MiFID II introduces new straight-through processing requirements for cleared transactions. To comply with these requirements, the CDS Procedures have been amended to implement certain requirements under MiFID II relating to the timing of submission of transactions for clearing. Specifically, Section 4.4(a) has been amended to clarify the clearing house's obligation to give notice of the acceptance or rejection of a submitted CDS transaction on a real-time basis for purposes of MiFID II. The amendments also address the submission of certain bilaterally executed transactions, in light of the trade execution requirements of MiFID II, and require that clearing members only submit CDS trade particulars in relation to bilateral CDS transactions if, at the time such transactions were entered into, it was not agreed that the transaction would be submitted for clearing. Certain other clarifications to the bilateral submission process are also made. Paragraphs 4.17 and 4.18 have been amended to revise the timeframes under which ICEU will accept or reject CDS trade particulars submitted for clearing, depending on the manner of execution or facility through which the transaction was executed, consistent with the requirements of MiFID II. The amendments supplement the existing provisions in the Clearing Procedures that implement applicable U.S. law requirements as to the timing of submission of clearing and transaction processing,²¹ such that ICE Clear Europe will be in compliance with both U.S. and EU requirements in this regard.

(Markets in Financial Instruments) Regulations 2017 (SI 2017/701), which amends the definition of "securities" (used in the context of a "securities transfer order") in the Settlement Finality Regulations to refer to the definition of "securities" under MiFID II (Regulation 50(4), Schedule 5, paragraph 2(b)).

²¹ See, e.g., 17 CFR 39.12(b)(7).

Market Maker Amendments

The Clearing Procedures have also been amended as a consequence of proposed revisions to the ICE Futures Europe Rules in light of the MiFID II market making scheme requirements. Under the proposed amendments, ICE Futures Europe's existing "Market Maker Programs" have been renamed as "Liquidity Provider Programs" to distinguish the existing incentive scheme under the ICE Futures Europe Rules from the market maker scheme regulated under MiFID II in relation to certain types of financial instruments. As a result of this change, the Clearing Procedures are being amended to rename the relevant position keeping account as "Liquidity Provider" rather than "Market Maker," specifically in Paragraph 2.3(b)(vii) and the related summary table following Paragraph 3.2(a).

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act²² and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.²³ In particular, Section 17A(b)(3)(F) of the Act²⁴ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed amendments are intended to address specific requirements in MiFID II relating to indirect clearing, as well as certain other MiFID II requirements and implications. In general, the amendments adopt new account classes mandated by these European regulations to facilitate protection of positions and margin provided by indirect clients of customers of clearing members. Through the new account classes, which generally mirror other account classes available to Non-FCM/BD Clearing Members, the amendments will enable clearing members to separate such positions and margin of indirect clients from other positions and margin of direct customers. This in turn is intended to support enhanced protections for indirect clients in the

²² 15 U.S.C. 78q-1.

²³ 17 CFR 240.17Ad-22.

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

event of a default of the customer of the clearing member, consistent with the goals of MiFID II. The amendments also adopt a separate set of additional position-keeping accounts for indirect clients of customers of FCM/BD Clearing Members, which are designed to facilitate tracking of positions of such clients by clearing members while taking into the account the particular requirements of the segregation regime for FCM/BD Clearing Members under the Commodity Exchange Act and U.S. Bankruptcy Code. In ICE Clear Europe's view, the amendments are thus designed to promote the prompt and accurate clearance and settlement of derivative transactions, and promote the protection of customers and indirect clients and the public interest, in a manner consistent with Section 17A(b)(3)(F). Although, as noted above, the amendments treat FCM/BD Clearing Members and Non-FCM/BD Clearing Members differently in terms of the availability of indirect clearing accounts, these distinctions reflect the relevant differences in the legal and regulatory framework applicable to such clearing members, and as such do not unfairly discriminate among clearing members within the meaning of Section 17A(b)(3)(F) of the Act.

The amendments are also consistent with the relevant requirements of Rule 17Ad-22. In particular, Rule 17Ad-22(e)(1)²⁵ requires that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The amendments are necessary to comply with the European regulations. In adopting specific alternative rules for FCM/BD Clearing Members, ICE Clear Europe has also taken account of the particular requirements applicable to such clearing members under U.S. law. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(1).

Rule 17Ad-22(e)(14)²⁶ requires that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant.

²⁵ 17 CFR 240.17Ad-22(e)(1).

²⁶ 17 CFR 240.17Ad-22(e)(14).

The amendments are designed to enhance procedures for segregation and portability of positions and margin of indirect clients of customers of clearing members, in line with the requirements of MiFID II. The amendments for FCM/BD Clearing Members are also consistent with the requirements of U.S. law as to segregation and portability. As a result, the amendments comply with Rule 17Ad-22(e)(14).

Rule 17Ad-22(e)(10)²⁷ requires that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries. The proposed amendments add certain provisions relating to delivery of emission allowances, including Rules that address the finality of such obligations under relevant legislation. Such changes are, in ICE Clear Europe's view, consistent with the Rule.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to comply with European regulatory changes. Although use of the indirect clearing accounts may impose certain additional costs on clearing members, these result from the requirements imposed by MiFID II and related regulations. Moreover, the amendments would apply to all Non-FCM/BD Clearing Members in the same way, and similarly to all FCM/BD Clearing Members in the same way (taking into account the differences in legal regime between those two types of clearing members). As a result, ICE Clear Europe does not believe the amendments would adversely affect competition among clearing members, the market for clearing services generally or access to clearing in cleared products by clearing members or other market participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have been

solicited by ICE Clear Europe through a public consultation pursuant to Circular C17/129, dated 8 November 2017. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed amendments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ICEEU-2017-014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-ICEEU-2017-014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying

information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2017-014 and should be submitted on or before January 25, 2018.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.²⁸ Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.²⁹ Rule 17Ad-22(e)(1) requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.³⁰ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A of the Act and Rule 17Ad-22(e) thereunder.

a. Indirect Clearing

The Commission finds that the portions of the proposed rule change that seek to implement the Indirect Clearing requirements are consistent with the provisions of Rule 17Ad-22(e)(1). The Commission understands that, pursuant to MiFID II requirements,³¹ ICE Clear Europe must open and maintain new forms of customer accounts for their clearing members, which are to be used to hold assets and positions of indirect clients of direct customers of clearing members in standard omnibus indirect accounts and gross omnibus indirect accounts, as described above. The Commission also understands that the proposed changes to ICEEU's Rules and Clearing Procedures also make certain allowances for FCM/BD Clearing Members in light of particular requirements of U.S. law, as described in detail above. In particular, the Commission notes that ICE Clear Europe

²⁸ 15 U.S.C. 78s(b)(2)(C).

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

³⁰ 17 CFR 240.17Ad-22(e)(1).

³¹ As defined in note 10, *supra*.

²⁷ 17 CFR 240.17Ad-22(e)(10).

has represented that notwithstanding the creation of standard omnibus indirect accounts for FCM/BD Clearing Members that will be made available as position-keeping subaccounts of the existing customer accounts, the Swap Customer Account is not currently available for use by FCM/BD Clearing Members for customer positions in CDS Contracts (including CDS Contracts that are security-based swaps).³² The Commission relies on these particular representations and explanations by ICE Clear Europe. Consequently, the Commission believes that the proposed rule changes regarding Indirect Clearing facilitate ICE Clear Europe's ability to comply with regulatory requirements in the jurisdictions in which it operates, and help ensure that ICE Clear Europe's policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, consistent with the requirements of Rule 17Ad-22(e)(1).³³

b. Straight-Through Processing

The Commission understands that ICE Clear Europe is required under relevant provisions of MiFID II to implement certain provisions regarding straight-through processing. The Commission believes that the proposed rule changes regarding straight-through processing will better enable ICE Clear Europe to ensure that transactions are submitted, accepted, and cleared without undue delay. Therefore, the Commission finds that the proposed rule changes regarding straight-through processing promote the prompt and accurate clearance and settlement of securities transactions consistent with the requirements of Section 17A(b)(3)(F) of the Act.³⁴ Moreover, the Commission further finds the proposed rule changes regarding straight-through processing protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act³⁵ because the expeditious processing of transactions in cleared derivatives reduces the possibility of those transactions being disrupted by intervening events, such as a technological breakdown or a reduction in the financial condition of one of the counterparties. Furthermore, because the Commission believes that the proposed rule changes regarding straight-through process will maintain the consistency of ICE Clear Europe's CDS Procedures with relevant provisions of MiFID II, the Commission

finds that such proposed changes will help ensure that ICE Clear Europe's policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, consistent with Rule 17Ad-22(e)(1).³⁶

c. Other Provisions

With respect to the proposed rule changes amending ICE Clear Europe's Rules to implement new definitions for "Emission Allowance" and "Emissions Registry", as well as certain related conforming and clarifying edits, and the proposed changes to the Clearing Procedures to rename ICE Clear Europe's "Market Maker Programs" as "Liquidity Provider Programs" and to rename the relevant position keeping accounts accordingly, the Commission believes that the proposed rule changes will better enable ICE Clear Europe to maintain consistency with the relevant provisions of MiFID II, thereby helping to ensure that ICE Clear Europe's policies and procedure provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As a result, the Commission finds that such proposed rule changes are consistent with the requirements of Rule 17Ad-22(e)(1).³⁷

In its filing, ICE Clear Europe requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act.³⁸ Under Section 19(b)(2)(C)(iii) of the Act,³⁹ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICE Clear Europe believes that accelerated approval is warranted because the proposed rule change is required in order to comply with the MiFID II requirements, which go into effect on January 3, 2018.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act, for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the **Federal Register**, because the proposed rule change is required as of January 3, 2018 in order to facilitate ICE Clear Europe's efforts to comply with the aforementioned MiFID II requirements. Additionally, the Commission notes that the proposed changes do not impede compliance with relevant U.S. law,

including Section 17A(b)(3)(F) of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁴⁰ and the rules and regulations thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act⁴¹ that the proposed rule change (SR-ICEEU-2017-014) be, and hereby is, approved on an accelerated basis.⁴²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2017-28493 Filed 1-3-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82415; File No. SR-ICEEU-2017-015]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the ICE Clear Europe Clearing Procedures for the Exercise of F&O Options Contracts

December 28, 2017.

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 December 20, 2017, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ so that the proposal was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit

⁴⁰ 15 U.S.C. 78q-1.

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

³² See *supra* note 16.

³³ 17 CFR 240.17Ad-22(e)(1).

³⁴ 15 U.S.C. 78q-1(b)(3)(F).

³⁵ *Id.*

³⁶ 17 CFR 240.17Ad-22(e)(1).

³⁷ *Id.*

³⁸ 15 U.S.C. 78s(b)(2)(C)(iii).

³⁹ *Id.*

comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed amendments is to modify certain provisions of the ICE Clear Europe Procedures (the "Procedures")⁵ applicable to the exercise of F&O option contracts in order to align the Procedures with recent changes to ICE Futures Europe (the "Exchange" or "IFEU") rules for certain energy option contracts (the "Affected Contracts").⁶

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

The purpose of the proposed changes is to amend certain provisions of the Procedures applicable to the exercise of F&O option contracts in order to align the Procedures with changes to the Exchange rules for the Affected Contracts.

The amendments to the Procedures principally address the following matters:

Exercise of At-The-Money Options

The Procedures are being revised to contemplate automatic exercise of call options that are at-the-money on the expiration date, where the relevant

Exchange contract specifications so provide.

Exercise Instructions on the Expiration Date

The Procedures are also being revised to contemplate that some options cannot be electively (as opposed to automatically) exercised or abandoned on the expiration date, where the relevant Exchange contract specifications so provide.

Both sets of changes are intended to be consistent with the revised contract specifications for the Affected Contracts, which will feature automatic exercise of at-the-money call options and limitations on elective exercise on the expiration date.

The amendments to the Procedures also contain various other updates and clarifications to option exercise procedures. The specified changes being made to the Procedures are as follows:

In paragraph 5.1, a definition of "At The Money" has been added.

Several provisions have been updated to change terminology from "manual exercise" to "elective exercise" and clarify that elective exercise instructions or other notices may be submitted electronically in accordance with relevant technical specifications in effect (including via API) as well as manually via the ICE systems. These include paragraphs 5.2(b)(i), 5.3(a), 5.3(b), 5.4(a), 5.4(b) and 5.5(c).

Paragraph 5.2(c) has been revised to provide that the default settings to be applied for purpose of automatic exercise will be specified in the contract terms of the Exchange.

In paragraph 5.3(b), a clarification has been made that that this section refers to early exercise only.

In paragraph 5.5(b), amendments have been made to reflect that Exchange contract terms may state that automatic exercise will apply to at-the-money options, as discussed above.

In paragraph 5.5(d), an unnecessary statement concerning consequences of failure to contact the clearing house regarding exercise difficulties has been removed.

In paragraph 5.6, text has been added to include the determination of whether options are at and out of the money. Examples in paragraph 5.6(b) have been removed as unnecessary and outdated in light of the current changes.

Paragraph 5.7(a) has been amended to provide that the Exchange contract terms for a particular option will determine whether elective exercise and/or abandon notifications can be submitted on the relevant expiry date, as discussed above.

In paragraph 5.7(b), minor changes have been made to improve and correct wording and report names.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁸

Section 17A(b)(3)(F) of the Act⁹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments align exercise procedures for F&O option contracts with recent changes to relevant Exchange rules, and make certain other updates to such procedures. Specifically, the amendments revise exercise procedures to permit automatic exercise of at-the-money call options and to provide limitations on elective exercise on expiry day, where provided in the Exchange rules. The changes thus facilitate prompt and accurate clearance and settlement of F&O option contracts, consistent with the relevant exchange rules.

In addition, Rule 17Ad-22(e)(21)¹⁰ requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, among other matters. As discussed above, the amendments update exercise procedures with respect to option contracts to more effectively meet the requirements of its participants and the F&O option markets served by ICE Clear Europe, and align with particular Exchange rules.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments modify certain provisions of the

⁵ Capitalized terms used but not defined herein have the meanings specified in the Procedures or the ICE Clear Europe Clearing Rules.

⁶ These contracts include ICE Futures West Texas Intermediate Light Sweet Crude Oil Options Contract; ICE Futures West Texas Intermediate Light Sweet Crude Oil (CAD Denominated) Options Contract; ICE Futures West Texas Intermediate Light Sweet Crude Oil Weekly Options Contract; ICE Futures New York Harbour Heating Oil Options Contract; and ICE Futures New York Harbour Unleaded Gasoline Blendstock (RBOB) Options Contract.

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(e)(21)(i) and (iv).

Procedures applicable to the exercise of options to align the Procedures with recent changes to the Exchange rules, and to make certain other clarifications and updates. ICE Clear Europe does not believe the amendments would affect competition among clearing members or adversely affect the cost of clearing, the market for clearing services generally or access to clearing in these products by clearing members or other market participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed amendments.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(4)(ii)¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ICEEU-2017-015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2017-015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2017-015 and should be submitted on or before January 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017-28437 Filed 1-3-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82424; File No. SR-CboeEDGX-2017-008]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Market Data Fees

December 29, 2017.

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 December 15, 2017, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend [sic] the Market Data section of its fee schedule to lower the Internal Distribution⁵ fees and to adopt per User fees for the Cboe One Summary Feed.

The text of the proposed rule change is available at the Exchange's website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A "Distributor" is defined as "any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party." See the Exchange's fee schedule available at http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/. An "Internal Distributor" is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity." *Id.*

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(4)(ii).

¹³ 17 CFR 200.30-3(a)(12).

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to lower the fee for Internal Distribution and to adopt separate fees for Professional⁶ and Non-Professional Users⁷ for the Cboe One Summary Feed.

The Cboe One Feed is an optional data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on EDGX and its affiliated exchanges⁸ and for which they report quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.⁹ The Cboe One Feed also contains the individual last sale information for the Cboe Equity Exchanges (collectively with the aggregate BBO, the "Cboe One

Summary Feed"). In addition, the Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equity Exchanges for up to five (5) price levels ("Cboe One Premium Feed").

The Exchange proposes to amend its fee schedule to lower the fee for Internal Distribution for the Cboe One Summary Feed and to adopt separate fees for Professional and Non-Professional Users.¹⁰ The Exchange does not propose to amend the fees for the Cboe One Premium Feed.

Distribution Fees. Currently, each Internal Distributor that receives the Cboe One Summary Feed is charged a fee of \$10,000 per month. The Exchange now proposes to lower the fee for Internal Distribution to \$1,500 per month.

User Fees. Like it does today for External Distributors, the Exchange proposes to adopt per User fees for Internal Distributors that receive the Cboe One Summary Feed. The Exchange currently charges External Distributors that redistribute the Cboe One Summary Feed different fees for their Professional Users and Non-Professional Users. Those fees are \$10.00 per month for each Professional Users and \$0.25 per month for each Non-Professional Users. To date, the Exchange has not charged per User fees to Internal Distributors for the Cboe One Summary Feed. To offset the proposed reduction to the monthly Internal Distribution fee, the Exchange proposes to adopt per User fees for Internal Distribution, the amounts of each fee would be the same as the per User fees currently charged to External Distributors described above.

The Exchange also proposes to extend the current \$50,000 per month Enterprise Fee available to External Distributors of the Cboe One Summary Feed to Internal Distributors. In lieu of per User fees, the Enterprise fee will permit Internal Distributors who redistribute the Cboe One Summary Feed to an unlimited number of internal Professional and Non-Professional Users for a set fee of \$50,000 per month. For example, if an Internal Distributor had 15,000 Professional Users who each receive the Cboe One Summary Feed at \$10.00 per month, then that Internal Distributor will pay \$150,000 per month in Professional Users fees. Under the

proposed Enterprise Fee, the Internal Distributor will pay a flat fee of \$50,000 for an unlimited number of internal Professional and Non-Professional Users of the Cboe One Summary Feed. An Internal Distributor that pays the Enterprise Fee will not have to report its number of such Users (as set forth below) on a monthly basis. However, every six months, an Internal Distributor must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Like for External Distributors, the Enterprise Fee for Internal Distributors would be in addition to the applicable Distribution Fee.

Like External Distributors of the Cboe One Summary Feed, Internal Distributors that receive the Cboe One Summary Feed will be required to count every Professional User and Non-Professional User to which they provide the Cboe One Summary Feed, the requirements for which are identical to that currently in place for External Distributors of the Cboe One Summary Feed and other market data products offered by the Exchange.¹¹ Thus, the Internal Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. Internal Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an Internal Distributor's distribution of the Cboe One Summary Feed, the Internal Distributor must count as one User each unique User that the Internal Distributor has entitled to have access to the Cboe One Summary Feed. However, where a device is dedicated specifically to a single individual, the Internal Distributor must count only the individual and need not count the device.
- The Internal Distributor must identify and report each unique User. If a User uses the same unique method to gain access to the Cboe One Summary Feed, the Internal Distributor must count that as one User. However, if a unique User uses multiple methods to gain access to the Cboe One Summary Feed (e.g., a single User has multiple passwords and user identifications), the

⁶ A "Professional User" is defined as "any User other than a Non-Professional User." See the Exchange's fee schedule available at http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.

⁷ A "Non-Professional User" is currently defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." *Id.* See SR-CboeEDGX-2017-006 (filed December 15, 2017) (amending the definition of Non-Professional User to harmonize it with that of its affiliate exchanges, Cboe Exchange, Inc. and C2 Exchange, Inc. as of January 2, 2018).

⁸ EDGX's affiliated exchanges are Cboe BYX Exchange, Inc. ("BYX"), Cboe EDGA Exchange, Inc. ("EDGA"), and Cboe BZX Exchange, Inc. ("BZX", together with EDGX, EDGA, and BYX, the "Cboe Equity Exchanges").

⁹ See Exchange Rule 11.22(j). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe One Feed ("Cboe One Approval Order").

¹⁰ The Exchange also proposes a non-substantive, immaterial change to the fee table headings to conform to other heading within the Market Data Section of the fee schedule. In particular, the Exchange proposes to change the term "Distributor" to "Distribution" in both the Internal Distributor and External Distributor headings under the Cboe One Feed.

¹¹ See Securities Exchange Act Release Nos. 74282 (February 18, 2015); 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09) (proposing fees for the Bats One Feed); 75397 (July 8, 2015), 80 FR 41104 (July 14, 2015) (SR-EDGX-2015-28) (proposing user fees for the EDGX Top and Last Sale data feeds); and 75788 (August 28, 2015), 80 FR 53364 (September 3, 2015) (SR-EDGX-2015-38) (proposing fees for EDGX Book Viewer).

Internal Distributor must report each of those methods as an individual User.

- Internal Distributors must report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

- If an Internal Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count.

Implementation Date

The Exchange intends to implement the proposed fees on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹² in general, and furthers the objectives of Section 6(b)(4),¹³ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act¹⁴ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁵ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also

spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors who subscribe to the Cboe One Summary Feed will be subject to the proposed fees. The Cboe One Summary Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the Cboe One Summary Feed further ensure that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. For example, the Cboe One Summary Feed provides investors with alternative market data and competes with similar market data product currently offered by other exchanges. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to create the Cboe One Summary Feed, prospective Users likely would not subscribe to, or would cease subscribing to either market data product.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.¹⁶

¹⁶ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate

The Exchange believes that lowering the Internal Distribution fee for the Cboe One Summary Feed is equitable and reasonable because the lower fee coupled with the adoption of per User fees is designed to provide a price structure for Internal Distributors that is competitive and attracts additional subscribers to each market data feed. The Exchange also believes that it is reasonable to charge a lower fee to Internal Distributors than External Distributors because External Distributors redistribute the data to their subscribers for a fee while Internal Distributors do not.

The Exchange believes that implementing the Professional and Non-Professional User fees for the Cboe One Summary Feed are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. The addition of per User fees also enables the fee for Internal Distribution, thereby lowering their overall costs where the number of Users they account for is low. Moreover, introducing a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional investors to access the data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal Distributors and Users. The Exchange notes that the amount of the per User fees for Internal Distribution equal those charged for External Distribution for the Cboe One Summary Feed.

market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78k-1.

¹⁵ 17 CFR 242.603.

The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Cboe One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.¹⁷ Offering the Cboe One Summary Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

The proposed expansion of the Enterprise Fee to Internal Distributors of the Cboe One Summary Feed is reasonable because it could result in a fee reduction for Internal Distributors with a large number of Professional and Non-Professional Users. If an Internal Distributor has a smaller number of Professional Users of the Cboe One Summary Feed, then it may continue using the per User structure. By reducing prices for Internal Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more Internal Distributors may choose to receive and to distribute the Cboe One Summary Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain Internal Distributors that have large numbers of Professional and Non-Professional Users. Internal Distributors that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

(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 Exchange's ability to price the Cboe One Summary Feed is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow. The Cboe One Summary Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The Cboe One Summary Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.¹⁸

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to

establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the Cboe One Summary Feed ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Lastly, the Exchange represents that the proposed pricing of the Cboe One Summary Feed provides investors with alternative market data and competes with similar market data product currently offered by other exchanges.¹⁹ In addition, the Exchange notes the concerns regarding whether a competing vendor could create a similar product on the same price basis as the Exchange are not present here. The proposed changes are limited to fees for Internal Distributors who use the data for internal use only and not for the redistribution and sale to external parties.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and paragraph (f) of Rule 19b-4 thereunder.²¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁹ *Id.*

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

¹⁷ See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) ("Initial Cboe One Feed Fee Filings"). See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); and Nasdaq Rules 7023(b) and 7047.

¹⁸ See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQbasic> (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility ("TRF")); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades ("BQT") Data Feed); <https://www.nyse.com/market-data/real-time/nyse-bqt> (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

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-2017-008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2017-008. 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-CboeEDGX-2017-008 and should be submitted on or before January 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017-28495 Filed 1-3-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82421; File No. SR-LCH SA-2017-010]

Self-Regulatory Organizations; LCH SA; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Implementation of the Markets in Financial Instruments Regulation

December 29, 2017.

I. Introduction

On November 21, 2017, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("SEC" or "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 conforming and clarifying changes necessary to implement certain provisions of the European Union's Markets in Financial Instruments Regulation ("MiFIR").³ The proposed rule change was published for comment in the **Federal Register** on December 7, 2017.⁴ The Commission received no comment letters regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

a. Overview

The principal purpose of this proposed rule change is to amend LCH SA's CDS Clearing Rulebook (the "Rulebook") and CDS Clearing Procedures (the "Procedures") to implement provisions of MiFIR that are applicable to central counterparties ("CCPs") authorized under the European Markets Infrastructure Regulation ("EMIR")⁵ (each such CCP, an "authorized CCP").⁶ In particular, the proposed rule changes are intended to implement Article 29 of MiFIR,

which the Commission understands requires authorized CCPs to establish effective systems, procedures and arrangements to ensure that cleared derivatives transactions are submitted and accepted for clearing on a straight-through processing ("STP") basis,⁷ and Article 30 of MiFIR, which the Commission understands requires authorized CCPs to establish indirect clearing arrangements with respect to exchange-traded derivatives ("ETDs") that are of "equivalent effect" to the corresponding requirements under EMIR.⁸

In addition, the Commission understands that the European Commission has adopted regulatory technical standards to set more specific requirements that authorized CCPs must meet in order to comply with MiFIR. The regulatory technical standards for straight-through processing ("RTS 26") were adopted in 2016.⁹ More recently, the European Commission adopted regulatory technical standards, which align the indirect clearing requirements under EMIR and MiFIR ("Indirect Clearing RTS").¹⁰ MiFIR takes effect January 3, 2018 and it is expected that the Indirect Clearing RTS will also take effect on the same date.

b. Straight-Through Processing

The Commission understands that RTS 26 establishes the specific requirements with which authorized CCPs, trading venues,¹¹ and clearing

⁷ In this context, the Commission understands STP to mean that an authorized CCP must have systems, procedures, and arrangements in place to ensure derivatives are cleared as quickly as technologically practicable using automated systems. Notice, 82 FR at 57804. The Commission understands that RTS 26 provides detailed additional requirements regarding the transfer of information and related authorized CCP rulebook requirements, as well as timelines for the transfer of information, among other things. See *id.* at 57803 & n.5 (citing RTS 26).

⁸ Notice, 82 FR at 57803.

⁹ Commission Delegated Regulation (EU) 2017/582 of 29.6.2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.

¹⁰ Commission Delegated Regulation (EU) of 22.9.2017 amending Commission Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements. A separate, but identical, set of RTS apply to indirect clearing of exchange-traded derivatives. See, Commission Delegated Regulation (EU) of 22.9.2017 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on indirect clearing arrangements.

¹¹ The Commission understands that the term "trading venue," as used in RTS 26, refers to EU-based venues only (*i.e.*, regulated markets, multilateral trading facilities and organized trading facilities). LCH SA therefore represents that third-

Continued

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

⁴ Securities Exchange Act Release No. 34-82194 (December 1, 2017), 82 FR 57803 (December 7, 2017) (SR-LCH-2017-010) ("Notice").

⁵ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade reporting.

⁶ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Rulebook.

members¹² must comply in order to ensure that transactions in cleared derivatives are submitted and accepted for clearing “as soon as technologically practicable using automated systems,” as required by Article 29(2) of MiFIR. LCH SA stated that it must comply with the RTS 26 requirements applicable to authorized CCPs.¹³ These requirements can be conceptually divided as: (i) A CCP’s information requirements; (ii) cleared derivatives transactions concluded on a trading venue; (iii) cleared derivatives transactions concluded bilaterally; (iv) resubmission of cleared derivatives transactions in the event of clerical error or technical problems; and (v) backloading transactions.

i. CCP Information Requirements

Article 1(2) of RTS 26 requires an authorized CCP to detail in its rules the information it needs from trading venues and counterparties to clear derivatives transactions, and the format such information must take, in order for the authorized CCP to accept that transaction for clearing.¹⁴

The Commission understands that the Rulebook currently provides that all clearing members must be participants of at least one Approved Trade Source System, *i.e.*, a middleware provider, which receives Original Transaction Data relating to Intraday Transactions from the relevant Clearing Members or the relevant Trading Venue. The Approved Trade Source System is then

country venues (*e.g.*, U.S. swap execution facilities, security-based swap execution facilities, designated contract markets and national securities exchanges) are not required to comply with the RTS 26 provisions applicable to trading venues. Notwithstanding this definition, LCH SA explains that it proposes to apply the STP amendments described herein with respect to all derivatives transactions concluded on swap execution facilities and designated contract markets registered with the U.S. Commodity Futures Trading Commission (“CFTC”) and the definition of the term “Trading Venue” in the Rulebook has been amended accordingly (*See* Section 1.1.1 of the Rulebook). Notice, 82 FR at 57803, n. 7.

¹² The Commission understands that the term “clearing member” is not defined in RTS 26. However, Article 29 of MiFIR refers to “investment firms which act as clearing members in accordance with” EMIR. LCH SA represents that the term “investment firm” refers only to those EU firms which are required to be authorized under the revised Markets in Financial Instruments Directive (“MiFID II”) and, therefore, third-country firms that are clearing members of authorized CCPs (*e.g.*, SEC-registered broker dealers (“BDs”) and futures commission merchants (“FCM”) registered with the CFTC) are not required to comply with the RTS 26 provisions applicable to clearing members. In any event, LCH SA proposes to apply the STP requirements discussed herein to all derivatives transactions submitted for clearing by any Clearing Member, including a Clearing Member that is a BD or FCM. Notice, 82 FR at 57804, n. 8.

¹³ Notice, 82 FR at 57803–04.

¹⁴ *Id.* at 57804.

responsible for ensuring that this data is then submitted to LCH SA. To give effect to the CCP information requirements of Article 1(2) of RTS 26, LCH SA proposed to amend Article 3.1.4.1 of the Rulebook to confirm that the data relating to such submission must be made in a format acceptable to, or required by, the relevant Approved Trade Source System.¹⁵

ii. Cleared Derivatives Transactions Concluded on a Trading Venue

Article 3(4) of RTS 26 requires an authorized CCP to accept or reject a cleared derivatives transaction concluded on a trading venue for clearing within 10 seconds of receipt of the relevant information from the trading venue.¹⁶ Where the authorized CCP determines to reject the transaction for clearing, it is required to inform the clearing member and the trading venue on a real-time basis.¹⁷

LCH SA noted that it has traditionally imposed a series of controls on Intraday Transactions, including the following:

- Eligibility Controls, which verify the completeness of the information relating to the Original Transaction and to determine whether the Original Transaction meets LCH SA’s Eligibility Requirements;
- Client Transaction Checks, which verify whether, in respect of an Original Transaction that is a Client Transaction, the relevant Clearing Member has consented to the registration of the trade on behalf of its Client; and
- Notional and Collateral Checks, which verify whether accepting the trade for clearing would exceed the relevant Clearing Member’s Maximum Notional Amount and/or whether the Clearing Member has sufficient collateral available to satisfy the margin requirement associated with clearing the trade.¹⁸

LCH SA proposed to amend Section 5.3 of the Procedures to confirm that, in accordance with Article 3(4) of RTS 26, the relevant Clearing Member(s) are not required to provide their consent to the acceptance of a Trading Venue Transaction for clearing.¹⁹ LCH SA noted that it will, however, apply the Notional and Collateral Checks to

¹⁵ *Id.*

¹⁶ LCH SA represents that as a CFTC-registered derivatives clearing organization, LCH SA is currently subject to this same requirement in connection with its CDS Clearing Service. *See*, 17 CFR 39.12(b)(7); CFTC Staff Guidance of Straight-Through Processing, dated September 26, 2013, available at <http://www.cftc.gov/idx/groups/public/@newsroom/documents/file/stpguidance.pdf>. Notice, 82 FR at 57804, n. 9.

¹⁷ Notice, 82 FR at 57804.

¹⁸ *Id.*

¹⁹ *Id.*

Trading Venue Transactions.²⁰ LCH SA also proposed to amend Article 3.1.4.5 of the Rulebook to make clear that all stages of the intraday clearing process must occur within the timeframe required by Applicable Law, meaning that LCH SA must perform the Notional and Collateral Checks within the 10 second time-frame prescribed by Article 3(4) of RTS 26.²¹

Finally, LCH SA proposed to amend Article 3.1.5.1 of the Rulebook to clarify that notice of a Rejected Transaction will be provided to the relevant Trading Venue and/or Approved Trade Source System in accordance with Applicable Law.²²

iii. Cleared Derivatives Transactions Concluded Bilaterally

The Commission understands that Article 4(2) of RTS 26 requires an authorized CCP to send information concerning a cleared derivatives transaction concluded bilaterally between counterparties it receives from such counterparties to the relevant clearing member(s) within 60 seconds of receipt of such information. Moreover, LCH SA stated that Article 4(3) of RTS 26 requires the authorized CCP to accept or reject such a bilateral transaction for clearing within 10 seconds of receipt of the acceptance or non-acceptance by such clearing member(s), and where the authorized CCP determines to reject the transaction for clearing it is required to inform the clearing member on a real-time basis.²³

LCH SA proposed to amend Section 5.3 of the Procedures to clarify that cleared derivatives transactions concluded bilaterally will be subject to the Client Transaction Checks referred to above. In particular, LCH SA proposed that, upon successful completion of the Eligibility Controls, it will send a Consent Request to the relevant Clearing Member(s). Pursuant to Article 3.1.4.5 of the Rulebook, LCH SA is required to send each such Consent Request in accordance with the timeframe required by Applicable Law (*i.e.*, 60 seconds).²⁴

Once LCH SA has delivered a Consent Request, a Clearing Member then has a choice regarding how to respond. It may opt for a so-called “Automatic Take-Up Process,” whereby the Clearing Member effectively pre-approves specific Clients for automatic acceptance of Consent Requests; in such circumstances, the Clearing Member will not be required to

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

respond to the Consent Request.²⁵ A Clearing Member may also opt for a “Manual Take-Up Process,” whereby it must affirmatively respond within the time frame required by Applicable Law (*i.e.*, 60 seconds) or otherwise by the end of the real-time clearing session on that day, as set forth in the amendments proposed by LCH SA.²⁶ The proposed changes would then require LCH SA to accept or reject the trade, and make the relevant notifications, within the timeframe required under Applicable Law.²⁷

Finally, LCH SA proposed to amend Article 3.1.5.1 of the Rulebook to clarify that notice of a Rejected Transaction will be provided to the relevant Clearing Member and/or Approved Trade Source System in accordance with Applicable Law.²⁸

iv. Resubmission

Where the non-acceptance of a cleared derivatives transaction for clearing is due to a clerical or technical error, Article 5(3) of RTS 26 permits the trade to be resubmitted within one hour, provided the original counterparties to the trade agree to such resubmission.²⁹ Accordingly, LCH SA proposed to amend Article 3.1.5.1 of the Rulebook to state that a Rejected Transaction may be resubmitted for clearing in accordance with Applicable Law.

v. Treatment of Backloading Transactions

The Commission understands that STP requirements apply to “cleared derivatives transactions,” which are defined in Article 29(2) of MiFIR to include derivatives that are concluded on an EU-regulated market, all OTC derivatives that are subject to an EMIR mandatory clearing requirement, and all other derivatives which are agreed by the relevant counterparties to be cleared.³⁰ LCH SA proposed to amend the Rulebook to designate Backloading Transactions as outside of the scope of MiFIR’s STP requirements. Specifically, Article 3.1.6.3 would be amended to provide that LCH SA is entitled to assume that any Backloading Transaction submitted for clearing by LCH SA was either entered into prior to the effective date of MiFIR (*i.e.*, January 3, 2018) or is otherwise not subject to an EMIR mandatory clearing requirement and that the parties to the Backloading Transaction did not agree

at the time of execution for the Backloading Transaction to be subject to clearing.³¹

c. Indirect Clearing Arrangements

i. Indirect Clearing RTS

The Commission understands that Article 4(3) of EMIR requires that indirect clearing arrangements should not increase counterparty risk and ensure protections that are of “equivalent effect” to the protections for client clearing set out in Articles 39 and 48 of EMIR.³² For these purposes, the term “indirect clearing arrangement” refers to a set of relationships—also called a “chain”—where at least two intermediaries are interposed between an end-client and the relevant authorized CCP. The most basic indirect clearing chain therefore involves the following four entities: An authorized CCP; a clearing member of the authorized CCP; the client of the Clearing Member that is itself an intermediary (“Direct Client”); and the client of such Direct Client (“Indirect Client”). The Commission also understands that longer chains are permitted in certain circumstances.³³

LCH SA noted that the majority of the obligations under the Indirect Clearing RTS fall to Clearing Members and Direct Clients, but that authorized CCPs must comply with certain new requirements relating to account structures, default management, and risk management.³⁴ Because indirect clearing was a concept introduced in EMIR, LCH SA stated that its Rulebook already had a number of features implementing the initial set of indirect clearing requirements. LCH SA proposed the following conforming amendments to reflect the updated requirements of the Indirect Clearing RTS.³⁵

ii. Indirect Client Account Structures

An authorized CCP must permit a clearing member to open and maintain

at least the following two types of accounts for its Direct Client(s) that have Indirect Client(s):

- One omnibus segregated account for all Indirect Clients of all such Direct Clients (“CCP OSA”); and
- one gross (position and margin) segregated account per Direct Client for all Indirect Clients of that Direct Client that choose gross segregation (a “CCP GOSA”).

Therefore, an authorized CCP is expected to maintain at least: (i) One CCP OSA per clearing member; plus (ii) the requisite number of Direct Client-specific CCP GOSAs per clearing member.³⁶

The principal indirect clearing-related amendment to the Rulebook that LCH SA proposed is the introduction of two new account structures that are putatively designed to reflect the requirements of the Indirect Clearing RTS. Specifically, LCH SA proposed to introduce a new CCM Indirect Client Net Segregated Account Structure (*i.e.*, a CCP OSA) as well as a new CCM Indirect Client Gross Segregated Account Structure (*i.e.*, a CCP GOSA), collectively referred to as CCM Indirect Client Segregated Account Structures.³⁷

LCH SA also proposed to amend Title V, Chapter 2 of the Rulebook to specify the circumstances in which such Account Structures may be opened. In particular, Article 5.2.1.3 would be amended to clarify that a given CCM Client that provides indirect clearing services to CCM Indirect Clients must be allocated to one CCM Indirect Client Net Segregated Account Structure but may, upon request, be allocated to one CCM Indirect Client Gross Segregated Account Structure.³⁸

iii. Default Management

LCH SA noted that the Indirect Clearing RTS primarily addresses a Clearing Member’s default management of an insolvent Direct Client and therefore does not specifically address an authorized CCP’s treatment of CCP OSAs and CCP GOSAs in the event of a Clearing Member default. Nevertheless, LCH SA stated that it believes that these accounts should be held, to the extent possible, in accordance with the requirements of EMIR Articles 39 and 48.³⁹ As a result, LCH SA proposed the following amendments to the Rulebook to address the treatment of CCM Indirect Client Segregated Account Structures in the

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 57805.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ LCH SA represented that the indirect clearing arrangements for OTC derivatives described herein, in particular, the requirements relating to account structures and default management, generally will not be applicable to Clearing Members that are FCM Clearing Members or U.S. Clearing Members, *i.e.*, BDs. LCH SA further represented that, in connection with the CDS Clearing Service, FCM Clearing Members will continue to be required to maintain cleared swaps customer accounts in accordance with the segregation requirements set out in Section 4d(f) of the Commodity Exchange Act and Part 22 of the CFTC’s rules, 17 CFR 22.1 *et seq.* Similarly, LCH SA explained that a U.S. Clearing Member that is not also an FCM Clearing Member will be required to maintain customer security-based swap accounts in accordance with 17 CFR 240.15c3-3. See Notice, 82 FR at 57805.

³⁵ Notice, 82 FR at 57805.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 57805–06.

³⁹ *Id.* at 57806.

event of the default of the CCM, the CCM Client and of LCH SA itself:

CCM Default

- In the event of a CCM default, Clause 4.3 of the CDS Default Management Process would be amended to provide that LCH SA will attempt, in the first instance, to port the Client Cleared Transactions of a CCM Indirect Gross Segregated Account Client to a single Backup Clearing Member, provided that certain conditions are met, including that the Backup Clearing Member has unconditionally agreed to act as Backup Clearing Member and that the instruction is received within the prescribed timeframe—referred to as the “Porting Window”—established by LCH SA for this purpose. If these conditions are not met, LCH SA proposed to liquidate the existing Client Cleared Transactions and re-establish them with the Backup Clearing Member. LCH SA also proposed, upon instruction, to transfer the associated Collateral to the Backup Clearing Member.

- In respect of Client Cleared Transactions in a CCM Indirect Client Net Segregated Account Structure (or where porting is not achieved in respect of Client Cleared Transactions in a CCM Indirect Client Gross Segregated Account Structure), LCH SA proposed to amend Clause 4.4.3 of the CDS Default Management Process, which requires LCH SA to calculate an amount—called the “CDS Client Clearing Entitlement”—equal to: (1) The pro rata share of the liquidation of the Non-Ported Cleared Transactions; plus (2) the pro rata share of the liquidation value of the Client Assets recorded in the relevant Client Collateral Account; minus (3) the pro rata share of the costs of any hedging undertaken; minus (4) the pro rata share of the costs, expenses and liabilities of LCH SA in implementing the CDS Client Default Management Process, in each case where such pro rata share is attributable to a given CCM Indirect Client to reference Indirect Client Segregated Account Structures.

- Upon a CCM default, LCH SA proposed to amend Article 4.3.3.1 of the Rulebook to clarify that CCM Indirect Clients belonging to a CCM Indirect Client Gross Segregated Account Structure bear no fellow-customer risk: Only the value of the Collateral referable to a given CCM Indirect Client—called the “CCM Indirect Client Gross Account Balance”—will be available to satisfy any Damages attributable to the liquidation of any Non-Ported Cleared

Transactions referable to such CCM Indirect Client.⁴⁰

CCM Client Default

In the event of the default of a CCM Client that has CCM Indirect Clients, LCH SA’s normal default management arrangements for CCMs will not apply. Instead, LCH SA proposed that the defaulting CCM Client will be default managed by the CCM, which will determine whether to liquidate the Client Cleared Transactions registered in the relevant CCM Indirect Client Segregated Account Structures or to attempt to port the Client Cleared Transactions of the CCM Indirect Clients belonging to a CCM Indirect Client Gross Segregated Account Structure to a Backup Client. LCH SA also proposed amendments that provide that porting may occur on a consolidated basis, *i.e.*, where all the CCM Indirect Clients appoint a single Backup Client, or on a per-CCM Client Trade Account basis, *i.e.*, where a given CCM Indirect Client appoints a single Backup Client specific to that CCM Indirect Client. LCH SA proposed to amend Article 5.4.1.3 of the Rulebook to provide that LCH SA will make the relevant transfers in its records at the instruction of the CCM undertaking the default management of its defaulting CCM Client.⁴¹

LCH SA Default

LCH SA proposed to amend Article 1.3.1.9 of the Rulebook to clarify that, following a default by LCH SA, CCMs shall calculate a separate CCM Client Termination Amount in respect of each CCM Indirect Client Net Segregated Account Structure and each CCM Indirect Client Gross Segregated Account Structure it holds with LCH SA.⁴²

iv. Miscellaneous

The Commission understands that Article 3(3) of the Indirect Clearing RTS requires an authorized CCP to identify, monitor and manage any “material risks” arising from the provision of indirect clearing services that may affect the resilience of the authorized CCP to adverse market developments, and Article 2(3) of the Indirect Clearing RTS states that an authorized CCP may not “prevent the conclusion of” indirect clearing arrangements that are entered into on reasonable commercial terms.⁴³ Based on these requirements, LCH SA proposed to amend Article 5.1.3.1 of the

Rulebook to clarify that a CCM may permit its CCM Clients to offer clearing services to their CCM Indirect Clients, provided certain conditions are met. Specifically, the proposed amendments would clarify that the contractual terms of the indirect clearing arrangements must comply with the relevant requirements of EMIR and MiFIR and must further provide for the establishment of CCM Indirect Client Segregated Account Structures (described in greater detail above), in accordance with the wishes of the relevant CCM Indirect Clients.⁴⁴

Furthermore, LCH SA proposed to amend Article 5.2.1.1 of the Rulebook to include an express recognition that a given CCM Client may be acting in the capacity of clearing its own proprietary transactions as well as in the capacity of providing clearing services to its CCM Indirect Clients. Finally, LCH SA proposed amendments to Title V, Chapter 3 of the Rulebook to provide for non-default transfers of all Client Cleared Transactions in a given CCM Indirect Client Segregated Account Structure (accompanied by the associated Client Assets upon request) or partial transfers of Client Cleared Transactions in a given CCM Indirect Client Segregated Account Structure (without the associated Client Assets) to the relevant accounts of a Receiving Clearing Member.⁴⁵

d. Certain Clarifying Amendments

LCH SA also proposed certain clarifying revisions to the Rulebook, Procedures, and Clearing Notice as described below.

i. Auction Member Representation

LCH SA proposed amendments to various provisions of the CDS Default Management Process (Annex 1 of the Rulebook) to clarify the responsibilities between a Non-Defaulting Clearing Member and the Auction Member Representative appointed by the Non-Defaulting Clearing Member to act in such Clearing Member’s place in the competitive bidding process as described in Clause 5.4 of the CDS Default Management Process.⁴⁶

ii. Member Uncovered Risk

LCH SA proposed to replace the definition of “Member Uncovered Risk” with “Group Member Uncovered Risk” to take into account the relevant LCH Group Risk Policy, which considers whether Clearing Members belong to the same group for purposes of the relevant

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 57806–07.

⁴⁶ *Id.* at 57807.

risk calculations, including calculation of margin and Default Fund requirements. The proposed revisions are set out in Section 4.4.1.2 and Section 4.4.1.8 of the Rulebook and Sections 2.12, 2.16, and 6.4 of the Procedures.⁴⁷

iii. Calculation of Contributed Prices

LCH SA proposed amendments to Section 5.18.2 of the Procedures to reflect changes made to the methodology with regard to the application of the bid-ask restraint in the calculation of contributed prices. In addition, LCH SA proposed to remove the references to a particular time in the Rulebook regarding the price contribution process. Consequently, the definition of “End of Day” would be removed from the Rulebook. LCH SA proposed to amend Article 4.2.7.7 of the Rulebook and Section 5.18.5 (b) and (d) of Procedure 5 accordingly.⁴⁸

iv. New Approved Trade Source System

LCH SA proposed to amend Clearing Notice no. 2017/064 regarding the Approved Trade Source Systems to add a new Approved Trade Source System, Bloomberg Trade Facility Ltd.⁴⁹

III. Commission’s Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁵⁰ Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.⁵¹ Rule 17Ad–22(e)(1) requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively

identify, measure, monitor, and manage its credit exposures to participants.⁵³ Rule 17Ad–22(e)(6) requires, in relevant part, a covered clearing agency that provides central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.⁵⁴ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A of the Act and Rule 17Ad–22(e) thereunder.

a. Straight-Through Processing

The Commission understands that MiFIR and RTS 26 require LCH SA to implement the provisions described above regarding STP. By so amending its Rulebook and Clearing Procedures, LCH SA indicated that it will be able to better ensure that transactions are submitted, accepted, and cleared without undue delay. As a result, the Commission finds that the proposed rule change regarding STP promotes the prompt and accurate clearance and settlement of securities transactions consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁵⁵ Moreover, the Commission further finds the proposed rule change protects investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act⁵⁶ because the expeditious processing of transactions in cleared derivatives reduces the possibility of those transactions being disrupted by intervening events, such as a technological breakdown or a reduction in the financial condition of one of the counterparties.

In addition, because these amendments will maintain the consistency of LCH SA’s Rulebook and Procedures with MiFIR and RTS 26, the Commission finds the provisions with regard to STP will help ensure that LCH SA’s policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, consistent with Rule 17Ad–22(e)(1).

b. Indirect Clearing

The Commission similarly finds that the portions of the proposed rule change

that seek to implement MiFIR and the Indirect Clearing RTS are consistent with Rule 17Ad–22(e)(1). As noted above, the Commission understands that MiFIR and the Indirect Clearing RTS require LCH SA to implement provisions regarding indirect clearing, which include establishing two types of indirect clearing accounts and establishing the process for handling the assets of indirect clearing clients in the event of the default of the CCM, the CCM Client, or LCH SA. Furthermore, as noted above, LCH SA has clarified the changes relating to indirect client clearing will not be applicable to LCH SA’s FCM Clearing Members or its U.S. Clearing Members, *i.e.* broker-dealers registered with the Commission. LCH SA has explained that FCM Clearing Members “will continue to be required to maintain cleared swaps customer accounts in accordance with the segregation requirements set out in Section 4d(f) of the Commodity Exchange Act and Part 22 of the CFTC’s rules, 17 CFR 22.1 *et seq.*”⁵⁷ Similarly, LCH SA explained that a U.S. Clearing Member that is not also an FCM Clearing Member will be required to maintain customer security-based swap accounts in accordance with Commission Rule 15c3–3.⁵⁸ The Commission relies on these particular representations and explanations by LCH SA, and notes that it does not expect LCH SA to create CCP OSAs or CCP GOSAs for its FCM Clearing Members or U.S. Clearing Members. Instead, accounts for LCH SA’s FCM Clearing Members or U.S. Clearing Members will be subject to the applicable provisions of the Commodity Exchange Act and the rules and regulations promulgated thereunder and/or the Act and the rules and regulations promulgated thereunder.

The Commission further understands that the proposed amendments to LCH SA’s Rulebook and Procedures will bring LCH SA into compliance with the indirect clearing requirements of MiFIR and the related Indirect Clearing RTS while at the same time leaving unmodified the account structure used for LCH SA’s FCM Clearing Members and its U.S. Clearing Members. Therefore, the Commission finds the provisions with regard to STP will help ensure that LCH SA’s policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 15 U.S.C. 78s(b)(2)(C).

⁵¹ 15 U.S.C. 78q–1(b)(3)(F).

⁵² 17 CFR 240.17Ad–22(e)(1).

⁵³ 17 CFR 240.17Ad–22(e)(4).

⁵⁴ 17 CFR 240.17Ad–22(e)(6).

⁵⁵ 15 U.S.C. 78q–1(b)(3)(F).

⁵⁶ *Id.*

⁵⁷ See *supra* note 34.

⁵⁸ 17 CFR 240.15c–3–3.

all relevant jurisdictions, consistent with Rule 17Ad-22(e)(1).⁵⁹

c. Other Provisions

With respect to the proposed rule change replacing the definition of “Member Uncovered Risk” with “Group Member Uncovered Risk,” the Commission believes the proposed changes will improve LCH SA’s ability to identify and measure the risks associated with clearing processes by taking into account the relevant LCH Group Risk Policy and considering whether Clearing Members belong to the same group for purposes of the relevant risk calculations. As a result, the Commission believes that LCH SA will be better situated to collect the level of resources commensurate with the risks associated with affiliated Clearing Members and will thereby be able to more appropriately cover its credit exposures to its participants. Therefore, the Commission finds that the proposed rule change regarding the definition of Group Member Uncovered Risk will further the protection of investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.⁶⁰ For the same reasons, the Commission also finds that the proposed rule change regarding the definition of Group Member Uncovered Risk is consistent with the applicable requirements of Rules 17Ad-22(e)(4) and (e)(6).⁶¹

The proposed rule change also revises LCH SA’s CDS Default Management Process to clarify the responsibilities between a Non-Defaulting Clearing Member and the Auction Member Representative appointed by the Non-Defaulting Clearing Member to act in such Clearing Member’s place in the competitive bidding process. In doing so, the Commission finds the proposed rule change facilitates LCH SA’s CDS Default Management Process, thereby enabling LCH SA to limit its exposures to potential losses from defaults by its participants and the exposures of non-defaulting participants to losses that they cannot anticipate or control. As a result, the Commission finds that the proposed rule change regarding the responsibilities between a Non-Defaulting Clearing Member and the Auction Member Representative appointed by the Non-Defaulting Clearing Member further the protection of investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.⁶²

In its filing, LCH SA requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act.⁶³ Under Section 19(b)(2)(C)(iii) of the Act,⁶⁴ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. LCH SA believes that accelerated approval is warranted because the proposed rule change is required as of January 3, 2018 in order to comply with the requirements of MiFIR.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,⁶⁵ for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the **Federal Register**, because the proposed rule change is required as of January 3, 2018 in order to facilitate LCH SA’s efforts to comply with MiFIR, RTS 26, and the Indirect Clearing RTS. Additionally, the Commission notes that the proposed changes regarding indirect clearing do not apply to U.S. customers, and that LCH SA has represented that amending its Rulebook and Procedures to comply with requirements regarding indirect clearing do not impede compliance with relevant U.S. law, including Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁶⁶ and the rules and regulations thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act⁶⁷ that the proposed rule change (SR-LCH SA-2017-010) be, and hereby is, approved on an accelerated basis.⁶⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁹

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017-28492 Filed 1-3-18; 8:45 am]

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⁶³ 15 U.S.C. 78s(b)(2)(C)(iii).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 15 U.S.C. 78q-1.

⁶⁷ 15 U.S.C. 78s(b)(2).

⁶⁸ In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82416; File No. SR-CboeBYX-2017-004]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Market Data Fees

December 28, 2017.

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 December 15, 2017, Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to lower the Internal Distribution fees and to adopt per User fees for the Cboe One Summary Feed.

The text of the proposed rule change is available at the Exchange’s website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵⁹ 17 CFR 240.17Ad-22(e)(1).

⁶⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁶¹ 17 CFR 240.17Ad-22(e)(4) and (6).

⁶² 15 U.S.C. 78q-1(b)(3)(F).

the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to lower the fee for Internal Distribution and to adopt separate fees for Professional⁵ and Non-Professional Users⁶ for the Cboe One Summary Feed.

The Cboe One Feed is an optional data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on BYX and its affiliated exchanges⁷ and for which they report quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.⁸ The Cboe One Feed also contains the individual last sale information for the Cboe Equity Exchanges (collectively with the aggregate BBO, the "Cboe One Summary Feed"). In addition, the Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equity Exchanges for up to five (5) price levels ("Cboe One Premium Feed").

⁵ A "Professional User" is defined as "any User other than a Non-Professional User." See the Exchange's fee schedule available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.

⁶ A "Non-Professional User" is currently defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." *Id.* See SR-CboeBYX-2017-003 (filed December 15, 2017) (amending the definition of Non-Professional User to harmonize it with that of its affiliate exchanges, Cboe Exchange, Inc. and C2 Exchange, Inc. as of January 2, 2018).

⁷ BYX's affiliated exchanges are Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), and Cboe BZX Exchange, Inc. ("BZX", together with EDGX, EDGA, and BYX, the "Cboe Equity Exchanges").

⁸ See Exchange Rule 11.22(j). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe One Feed) ("Cboe One Approval Order").

The Exchange proposes to amend its fee schedule to lower the fee for Internal Distribution for the Cboe One Summary Feed and to adopt separate fees for Professional and Non-Professional Users.⁹ The Exchange does not propose to amend the fees for the Cboe One Premium Feed.

Distribution Fees. Currently, each Internal Distributor that receives the Cboe One Summary Feed is charged a fee of \$10,000 per month. The Exchange now proposes to lower the fee for Internal Distribution to \$1,500 per month.

User Fees. Like it does today for External Distributors, the Exchange proposes to adopt per User fees for Internal Distributors that receive the Cboe One Summary Feed. The Exchange currently charges External Distributors that redistribute the Cboe One Summary Feed different fees for their Professional Users and Non-Professional Users. Those fees are \$10.00 per month for each Professional Users and \$0.25 per month for each Non-Professional Users. To date, the Exchange has not charged per User fees to Internal Distributors for the Cboe One Summary Feed. To offset the proposed reduction to the monthly Internal Distribution fee, the Exchange proposes to adopt per User fees for Internal Distribution, the amounts of each fee would be the same as the per User fees currently charged to External Distributors described above.

The Exchange also proposes to extend the current \$50,000 per month Enterprise Fee available to External Distributors of the Cboe One Summary Feed to Internal Distributors. In lieu of per User fees, the Enterprise fee will permit Internal Distributors who redistribute the Cboe One Summary Feed to an unlimited number of internal Professional and Non-Professional Users for a set fee of \$50,000 per month. For example, if an Internal Distributor had 15,000 Professional Users who each receive the Cboe One Summary Feed at \$10.00 per month, then that Internal Distributor will pay \$150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the Internal Distributor will pay a flat fee of \$50,000 for an unlimited number of internal Professional and Non-Professional Users of the Cboe One Summary Feed. An Internal Distributor that pays the Enterprise Fee will not have to report its

number of such Users (as set forth below) on a monthly basis. However, every six months, an Internal Distributor must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Like for External Distributors, the Enterprise Fee for Internal Distributors would be in addition to the applicable Distribution Fee.

Like External Distributors of the Cboe One Summary Feed, Internal Distributors that receive the Cboe One Summary Feed will be required to count every Professional User and Non-Professional User to which they provide the Cboe One Summary Feed, the requirements for which are identical to that currently in place for External Distributors of the Cboe One Summary Feed and other market data products offered by the Exchange.¹⁰ Thus, the Internal Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. Internal Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an Internal Distributor's distribution of the Cboe One Summary Feed, the Internal Distributor must count as one User each unique User that the Internal Distributor has entitled to have access to the Cboe One Summary Feed. However, where a device is dedicated specifically to a single individual, the Internal Distributor must count only the individual and need not count the device.

- The Internal Distributor must identify and report each unique User. If a User uses the same unique method to gain access to the Cboe One Summary Feed, the Internal Distributor must count that as one User. However, if a unique User uses multiple methods to gain access to the Cboe One Summary Feed (e.g., a single User has multiple passwords and user identifications), the Internal Distributor must report each of those methods as an individual User.

- Internal Distributors must report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

⁹ The Exchange also proposes a non-substantive, immaterial change to the fee table headings to conform to other heading within the Market Data Section of the fee schedule. In particular, the Exchange proposes to change the term "Distributor" to "Distribution" in both the Internal Distributor and External Distributor headings under the Cboe One Feed.

¹⁰ See Securities Exchange Act Release Nos. 74284 (February 18, 2015); 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) (proposing fees for the Cboe One Feed); 75407 (July 9, 2015), 80 FR 41532 (July 15, 2015) (SR-BYX-2015-30) (proposing user fees for the BYX Top and Last Sale data feeds); and 75786 (August 28, 2015), 80 FR 53353 (September 3, 2015) (SR-BYX-2015-36) (proposing fees for BYX Book Viewer).

- If an Internal Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count.

Implementation Date

The Exchange intends to implement the proposed fees on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives 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 recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act¹³ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁴ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors who subscribe to the Cboe One Summary Feed will be subject to the proposed fees. The Cboe

One Summary Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the Cboe One Summary Feed further ensure that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. For example, the Cboe One Summary Feed provides investors with alternative market data and competes with similar market data product currently offered by other exchanges. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to create the Cboe One Summary Feed, prospective Users likely would not subscribe to, or would cease subscribing to either market data product.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.¹⁵

¹⁵ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries

The Exchange believes that lowering the Internal Distribution fee for the Cboe One Summary Feed is equitable and reasonable because the lower fee coupled with the adoption of per User fees is designed to provide a price structure for Internal Distributors that is competitive and attracts additional subscribers to each market data feed. The Exchange also believes that it is reasonable to charge a lower fee to Internal Distributors than External Distributors because External Distributors redistribute the data to their subscribers for a fee while Internal Distributors do not.

The Exchange believes that implementing the Professional and Non-Professional User fees for the Cboe One Summary Feed are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. The addition of per User fees also enables the fee for Internal Distribution, thereby lowering their overall costs where the number of Users they account for is low. Moreover, introducing a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional investors to access the data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal Distributors and Users. The Exchange notes that the amount of the per User fees for Internal Distribution equal those charged for External Distribution for the Cboe One Summary Feed.

The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Cboe One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly

historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78k-1.

¹⁴ 17 CFR 242.603.

available.¹⁶ Offering the Cboe One Summary Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

The proposed expansion of the Enterprise Fee to Internal Distributors of the Cboe One Summary Feed is reasonable because it could result in a fee reduction for Internal Distributors with a large number of Professional and Non-Professional Users. If an Internal Distributor has a smaller number of Professional Users of the Cboe One Summary Feed, then it may continue using the per User structure. By reducing prices for Internal Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more Internal Distributors may choose to receive and to distribute the Cboe One Summary Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain Internal Distributors that have large numbers of Professional and Non-Professional Users. Internal Distributors that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

(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 Exchange's ability to price the Cboe One Summary Feed is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions;

(ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow. The Cboe One Summary Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The Cboe One Summary Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.¹⁷

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the Cboe One Summary Feed ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these

alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Lastly, the Exchange represents that the proposed pricing of the Cboe One Summary Feed provides investors with alternative market data and competes with similar market data product currently offered by other exchanges.¹⁸ In addition, the Exchange notes the concerns regarding whether a competing vendor could create a similar product on the same price basis as the Exchange are not present here. The proposed changes are limited to fees for Internal Distributors who use the data for internal use only and not for the redistribution and sale to external parties.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and paragraph (f) of Rule 19b-4 thereunder.²⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2017-004 on the subject line.

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

¹⁶ See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) ("Initial Cboe One Feed Fee Filings"). See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); and Nasdaq Rules 7023(b) and 7047.

¹⁷ See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQbasic> (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility ("TRF")); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades ("BQT") Data Feed); <https://www.nyse.com/market-data/real-time/nyse-bqt> (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2017–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2017–004 and should be submitted on or before January 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2017–28438 Filed 1–3–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32957]

**Notice of Applications for
Deregistration Under the Investment
Company Act of 1940**

December 29, 2017.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2017. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 23, 2018, 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: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Brad Gude, Senior Counsel, at (202) 551–5590 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Korea Equity Fund, Inc. [File No. 811–08002]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 29, 2017 and August 7, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of \$147,554 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on November 28, 2017.

Applicant's Address: Worldwide Plaza, 309 West 49th Street, New York, New York, 10019.

**Center Coast Core MLP Fund II, LLC
[File No. 811–22566]**

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on November 7, 2017, and amended on November 30, 2017.

Applicant's Address: 1600 Smith Street, Suite 3800, Houston, Texas, 77002.

**Brookfield MLP & Energy Infrastructure
Income Fund Inc. [File No. 811–22945]**

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on October 30, 2017, and amended on December 1, 2017.

Applicant's Address: Brookfield Place, 250 Vesey Street, New York, New York, 10281.

**The Finance Company of Pennsylvania
[File No. 811–01144]**

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 11, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of \$382,968 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on September 20, 2017, and amended on December 1, 2017.

Applicant's Address: 400 Market Street, Suite 425, Philadelphia, Pennsylvania 19106.

CCA Investments Trust [File No. 811–22753]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to CCA Aggressive Return Fund, a series of the MSS Series Trust, and, on October 16, 2017, made a final distribution to its shareholders based on net asset value. Expenses of

²¹ 17 CFR 200.30–3(a)(12).

\$38,657 incurred in connection with the reorganization were paid by the applicant's adviser.

Filing Dates: The application was filed on November 13, 2017, and amended on December 4, 2017.

Applicant's Address: 190 North Canon Drive, Suite 402, Beverly Hills, California, 90210.

Aetna Multi-Strategy 1099 Fund [File No. 811-22713]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on December 6, 2017.

Applicant's Address: c/o UMB Fund Services, Inc., 235 West Galena Street, Milwaukee, Wisconsin 53212.

Henderson Global Funds [File No. 811-10399]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. Each series of applicant has transferred its assets to a corresponding series of Janus Investment Fund, and, on May 31, 2017 and June 2, 2017, made final distributions to its shareholders based on net asset value. Expenses of \$4,227,058 incurred in connection with the reorganization were paid by the applicant's adviser.

Filing Dates: The application was filed on August 28, 2017, and amended on December 6, 2017.

Applicant's Address: 151 Detroit Street, Denver, Colorado 80206.

Integrity Managed Portfolios [File No. 811-06153]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. Each series of applicant has transferred its assets to a corresponding series of Viking Mutual Funds, and, on October 31, 2017, made a final distribution to its shareholders based on net asset value. Expenses of \$179,568 incurred in connection with the reorganization were paid by the parent company of applicant's adviser.

Filing Dates: The application was filed on December 7, 2017.

Applicant's Address: 1 Main Street North, Minot, North Dakota 58703.

RidgeWorth Funds [File No. 811-06557]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. Each series of applicant has transferred its assets to a corresponding series of Virtus Asset Trust and Investment Managers Series Trust, and, on June 30, 2017 and July 14, 2017, made final distributions to its shareholders based on net asset value. Expenses of \$4,791,191 incurred in connection with the reorganization were paid by applicant's adviser and the acquiror of applicant's adviser.

Filing Dates: The application was filed on October 26, 2017, and amended on December 8, 2017.

Applicant's Address: 3333 Piedmont Road, Suite 1500, Atlanta, Georgia 30305.

TFS Capital Investment Trust [File No. 811-21531]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 12, 2017, October 27, 2017, and October 30, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of \$220,273 incurred in connection with the liquidation were paid by the applicant, in part reimbursed by the adviser.

Filing Dates: The application was filed on November 2, 2017, and amended on December 8, 2017.

Applicant's Address: TFS Capital Management, 10 N High Street, Suite 500, West Chester, Pennsylvania 19380.

Transamerica Partners Portfolios [File No. 811-08272]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. Each series of applicant has transferred its assets to a corresponding series of Transamerica Funds, and, on March 10, 2017, March 24, 2017, April 21, 2017, May 5, 2017, September 15, 2017, and October 13, 2017, made final distributions to its shareholders based on net asset value. Expenses of \$1,772,198 incurred in connection with the reorganization were paid by the applicant, the applicant's adviser, and the destination series.

Filing Dates: The application was filed on November 13, 2017, and amended on December 8, 2017.

Applicant's Address: 1801 California Street, Suite 5200, Denver, Colorado 80202.

Transamerica Partners Funds Group II [File No. 811-07495]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. Each series of applicant has transferred its assets to a corresponding series of Transamerica Funds, and, on March 10, 2017, March 24, 2017, April 21, 2017, May 5, 2017, May 21, 2017, and October 13, 2017, made final distributions to its shareholders based on net asset value. Expenses of \$555,936 incurred in connection with the reorganization were paid by the applicant, the applicant's adviser, and the destination series.

Filing Dates: The application was filed on November 13, 2017, and amended on December 8, 2017.

Applicant's Address: 1801 California Street, Suite 5200, Denver, Colorado 80202.

Transamerica Partners Funds Group [File No. 811-07674]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. Each series of applicant has transferred its assets to a corresponding series of Transamerica Funds, and, on March 10, 2017, March 24, 2017, April 21, 2017, May 5, 2017, May 21, 2017, September 15, 2017, and October 13, 2017, made final distributions to its shareholders based on net asset value. Expenses of \$1,517,292 incurred in connection with the reorganization were paid by the applicant, the applicant's adviser, and the destination series.

Filing Dates: The application was filed on November 13, 2017, and amended on December 8, 2017.

Applicant's Address: 1801 California Street, Suite 5200, Denver, Colorado 80202.

FEG Directional Access TEI Fund LLC [File No. 811-23140]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on December 12, 2017.

Applicant's Address: 201 East Fifth Street, Suite 1600, Cincinnati, Ohio 45202.

FEG Directional Access Fund LLC [File No. 811-22685]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on December 12, 2017.

Applicant's Address: 201 East Fifth Street, Suite 1600, Cincinnati, Ohio 45202.

Bluearc Multi-Strategy Fund [File No. 811-23017]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant currently has fewer than 100 beneficial owners, is not presently making an offering of securities and does not propose to make any offering of securities. Applicant will continue to operate as a private investment fund in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on November 1, 2017, and amended on December 13, 2017.

Applicant's Address: 17605 Wright Street, Suite 2, Omaha, Nebraska 68130.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017-28488 Filed 1-3-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82418; File No. SR-NYSE-2017-70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Waive New Firm Application Fees for Applicants Seeking Only To Obtain a Bond Trading License for 2018 and Waive the BTL Fee for 2018

December 28, 2017.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder,³

notice is hereby given that, on December 21, 2017, New York Stock Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (i) waive new firm application fees for applicants seeking only to obtain a bond trading license ("BTL") for 2018; and (ii) waive the BTL fee for 2018. The Exchange proposes to implement the fee changes effective January 2, 2018. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (i) waive new firm application fees for applicants seeking only to obtain a BTL for 2018; and (iii) [sic] waive the BTL fee for 2018. The Exchange proposes to implement the fee changes effective January 2, 2018.

The Exchange currently charges a New Firm Fee ranging from \$2,500 to \$20,000, depending on the type of firm, that is charged per application for any broker-dealer that applies to be approved as an Exchange member organization. The Exchange proposes to waive the New Firm Fee for 2018 for new member organization applicants

that are seeking only to obtain a BTL and not trade equities at the Exchange. The proposed waiver of the New Firm Fee would be available only to applicants seeking approval as a new member organization, including carrying firms, introducing firms, or non-public organizations, that would be seeking to obtain a BTL at the Exchange and not trade equities. Further, if a new firm that is approved as a member organization and has had the New Firm Fee waived converts a BTL to a full trading license within one year of approval, the New Firm Fee would be charged retroactively. The Exchange believes that charging the New Firm Fee retroactively within a year of approval is appropriate because it would discourage applicants to claim that they are applying for a BTL solely to avoid New Firm Fees.

Additionally, the Exchange currently charges a BTL fee of \$1,000 per year. The Exchange proposes to amend the Price List to waive the BTL fee for 2018.

The Exchange believes that the proposed fee changes would provide increased incentives for bond trading firms that are not currently Exchange member organizations to apply for Exchange membership and a BTL. The Exchange believes that having more member organizations trading on the Exchange's bond platform would benefit investors through the additional display of liquidity and increased execution opportunities in Exchange-traded bonds at the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable to waive the New Firm Fee and the annual BTL fee for 2018 to provide an incentive for bond trading firms to apply for Exchange membership and a BTL. The Exchange believes that providing an incentive for bond trading firms that are not currently Exchange member organizations to apply for membership and a BTL would encourage market participants to become members of the Exchange and bring additional liquidity to the only

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4), (5).

transparent bond market. To the extent the existing New Firm Fees or the BTL fee serves as a disincentive for bond trading firms to become Exchange member organizations, the Exchange believes that the proposed fee change could expand the number of firms eligible to trade bonds on the Exchange. The Exchange believes creating incentives for bond trading firms to trade bonds on the Exchange protects investors and the public interest by increasing the competition and liquidity on the only transparent market for bond trading. The proposed waiver of the New Firm Fee and BTL fee is equitable and not unfairly discriminatory because it would be offered to all market participants that wish to trade at the Exchange the narrower class of debt securities only.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Debt securities typically trade in a decentralized over-the-counter ("OTC") dealer market that is less liquid and transparent than the equities markets. The Exchange believes that the proposed change would increase competition with these OTC venues by reducing the cost of being approved as and operating as an Exchange member organization that solely trades bonds at the Exchange, which the Exchange believes will enhance market quality through the additional display of liquidity and increased execution opportunities in Exchange-traded bonds at the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues that are not transparent. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges as well as with alternative trading systems and other venues that are not required to comply with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these

considerations, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2017-70. 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-NYSE-2017-70, and should be submitted on or before January 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017-28440 Filed 1-3-18; 8:45 am]

BILLING CODE 8011-01-P

⁶ 15 U.S.C. 78f(b)(8).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 15 U.S.C. 78s(b)(2)(B).

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82417; File No. SR–CboeBZX–2017–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the REX Bitcoin Strategy ETF and the REX Short Bitcoin Strategy ETF, Each a Series of the Exchange Listed Funds Trust, Under Rule 14.11(i), Managed Fund Shares

December 28, 2017.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on December 15, 2017, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposed rule change to list and trade shares of the REX Bitcoin Strategy ETF and the REX Short Bitcoin Strategy ETF (each a “Fund” and, collectively, the “Funds”), each a series of the Exchange Listed Funds Trust (the “Trust”), under Rule 14.11(i) (“Managed Fund Shares”). The shares of the Funds are referred to herein as the “Shares.”

The text of the proposed rule change is available at the Exchange’s website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares of the REX Bitcoin Strategy ETF (the “Long Fund”) and the REX Short Bitcoin Strategy ETF (the “Short Fund”) under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.⁴

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on April 4, 2012. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (“Registration Statement”) with the Commission.⁵ Exchange Traded Concepts, LLC is the investment adviser (the “Adviser”) to the Funds and commodity pool operator (“CPO”). Vident Investment Advisory, LLC is the sub-adviser (the “Sub-Adviser”) to the Funds and is registered as a Commodity Trading Advisor (“CTA”). The Funds will be operated in accordance with applicable CFTC rules, as well as the regulatory scheme applicable to registered investment companies. Registration as a CPO and CTA imposes additional compliance obligations on the Adviser, the Sub-Adviser and the Funds related to additional laws, regulations, and enforcement policies.

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such

investment company portfolio.⁶ In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, nor are they currently affiliated with a broker-dealer. The Adviser personnel who make decisions regarding each Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding each Fund’s portfolio. In the event that (a) the Adviser or Sub-Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, the Adviser or Sub-Adviser will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

⁶ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940, as amended (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

⁴ The Commission originally approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

⁵ See Registration Statement on Form N–1A for the Trust, dated December 8, 2017 (File Nos. 333–180871 and 811–22700). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”) (the “Exemptive Order”). See Investment Company Act Release No. 30445, April 2, 2013 (File No. 812–13969).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

Bitcoin Futures Contracts

Prior to listing a new commodity futures contract, a designated contract market must either submit a self-certification to the CFTC that the contract complies with the CEA and CFTC regulations or voluntarily submit the contract for CFTC approval. This process applies to all futures contracts and all commodities underlying the futures contracts, whether the new futures contracts are related to oil, gold, or any other commodity.⁷ On December 1, 2017, it was announced that both Cboe Futures Exchange, Inc. (“CFE”) and Chicago Mercantile Exchange, Inc. (“CME”) had self-certified with the CFTC new contracts for bitcoin⁸ futures products.⁹ While the CFE bitcoin futures contracts (“XBT Futures”) ¹⁰ and the CME bitcoin futures contracts (“CME Futures” and, collectively with the XBT Futures, the “Bitcoin Futures Contracts”) ¹¹ will differ in certain of their implementation details, both contracts will generally trade and settle like any other cash-settled commodity futures contracts.¹²

The Exchange proposes to list the Funds pursuant to Rule 14.11(i), however there are two ways in which

the Funds will not necessarily meet the listing standards included in that Rule. As such, the Exchange submits this proposal in order to allow each Fund to hold: (i) Listed derivatives in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b); ¹³ and (ii) Non-U.S. Component Stocks ¹⁴ in a manner that may not comply with Rule 14.11(i)(4)(C)(i)(b)(3) ¹⁵ and (4).¹⁶ Otherwise, the Funds will comply with all other listing requirements of the Generic Listing Standards ¹⁷ for Managed Fund Shares on an initial and

¹³ Rule 14.11(i)(4)(C)(iv)(b) provides that “the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).” The Exchange is proposing that the Funds be exempt from the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

¹⁴ The term “Non-U.S. Component Stock” means an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

¹⁵ Rule 14.11(i)(4)(C)(i)(b)(3) provides that “the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio.” As proposed, the Fund may hold as few as one Non-U.S. Component Stock, meaning that the Non-U.S. Component Stock could constitute 100% of the equity weight of the portfolio. As noted below, however, neither Fund will hold more than 25% of the weight of the portfolio in Non-U.S. Component Stocks.

¹⁶ Rule 14.11(i)(4)(C)(i)(b)(4) provides that “where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 total component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares.” While the Funds, as proposed, would be permitted to hold Derivative Securities Products or Linked Securities (both of which are ETPs, as defined below), they won’t necessarily hold such instruments and may hold fewer than 20 Non-U.S. Component Stocks, which would not comply with this Rule.

¹⁷ For purposes of this proposal, the term “Generic Listing Standards” shall mean the generic listing rules for Managed Fund Shares under Rule 14.11(i)(4)(C).

continued listing basis under Rule 14.11(i).

REX Bitcoin Strategy ETF

According to the Registration Statement, the Long Fund is an actively managed fund that seeks to provide investors with long exposure to the price movements of bitcoin. Under Normal Market Conditions,¹⁸ the Long Fund seeks to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of financial instruments providing long exposure to movements in the value of bitcoin, together with an actively managed portfolio of fixed income instruments. The Long Fund expects to obtain exposure to Bitcoin Derivatives ¹⁹ primarily by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund’s taxable year, in a wholly-owned and controlled Cayman Islands subsidiary (the “Long Subsidiary”). The Subsidiary is advised by the Adviser. Unlike the Long Fund, the Subsidiary is not an investment company registered under the 1940 Act. The Long Subsidiary has the same investment objective as the Long Fund. References below to the holdings of the Long Fund are inclusive of the holdings of the direct holdings of the Long Fund as well as the indirect holdings of the Long Fund through the Long Subsidiary. Such positions are generally collateralized by the Fund’s positions in cash and Cash Equivalents.²⁰

In order to achieve its investment objective, under Normal Market

¹⁸ The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹⁹ The term “Bitcoin Derivatives” includes Bitcoin Futures Contracts and other listed derivatives (as provided in Rule 14.11(i)(4)(C)(iv)) including options contracts, swap contracts, and other derivative instruments linked to bitcoin, the price of bitcoin, or an index thereof.

²⁰ As defined in Rule 14.11(i)(4)(C)(iii), Cash Equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds

⁷ Section 1a(9) of the CEA defines commodity to include, among other things, “all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.” The definition of commodity is broad. 7 U.S.C. 1a(9).

⁸ Bitcoin is a digital asset based on the decentralized, open source protocol of the peertopeer bitcoin computer network (the “Bitcoin Network”). No single entity owns or operates the Bitcoin Network; the infrastructure is collectively maintained by a decentralized user base. The Bitcoin Network is accessed through software, and software governs bitcoin’s creation, movement, and ownership. The value of bitcoin is determined by the supply of and demand for bitcoin on websites that facilitate the transfer of bitcoin in exchange for government-issued currencies, and in private end-user-to-end-user transactions.

⁹ Bitcoin is a commodity as defined in Section 1a(9) of the CEA. 7 U.S.C. 1a(9). See *In re Coinflip, Inc.*, No. 15–29 (CFTC Sept. 17, 2015), available at: <http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliporder09172015.pdf>.

¹⁰ The XBT Futures are cash-settled futures contracts based on the auction price of bitcoin in U.S. dollars on the Gemini Exchange that will expire on a weekly, monthly and quarterly basis. XBT Futures are designed to reflect economic exposure related to the price of bitcoin. XBT Futures began trading on December 11, 2017.

¹¹ The CME Futures are also cash-settled futures contracts based on the CME CF Bitcoin Reference Rate, which is based on an aggregation of trade flow from several bitcoin spot exchanges, that will expire on a monthly and quarterly basis. CME Futures are scheduled to begin trading on December 18, 2017.

¹² Bitcoin Futures Contracts are measures of the market’s expectation of the price of bitcoin at certain points in the future, and as such will behave differently than current or spot bitcoin prices. The Funds are not linked to bitcoin and in many cases the Funds could significantly underperform or outperform the price of bitcoin.

Conditions the Long Fund expects to hold the majority of its assets in Bitcoin Derivatives and cash and Cash Equivalents (which are used to collateralize Bitcoin Futures Contracts or other Bitcoin Derivatives), but may also invest in the following instruments: other Bitcoin Derivatives; U.S. exchange-listed ETPs;²¹ and Non-U.S. Component Stocks.²² The Long Fund will use the cash and Cash Equivalents to meet asset coverage tests resulting from the Long Fund's derivative exposure on a day-to-day basis. As a whole, the Fund's investments are meant to achieve its investment objective within the limitations of the federal tax requirements applicable to regulated investment companies.

The Long Fund intends to qualify each year as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.²³ The Long Fund will invest its assets (including via the Long Fund's subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

REX Short Bitcoin Strategy ETF

According to the Registration Statement, the Short Fund seeks to provide investors with short exposure to the price movements of bitcoin. Under Normal Market Conditions, the Short Fund seeks to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of financial instruments providing short exposure to movements in the value of bitcoin, together with an actively managed portfolio of fixed income instruments. The Short Fund expects to obtain exposure to Bitcoin Derivatives primarily by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund's taxable year, in a wholly-owned and controlled Cayman Islands subsidiary (the "Short Subsidiary"). The Short Subsidiary is advised by the Adviser. Unlike the Short Fund, the Short Subsidiary is not an investment company registered under the 1940 Act. The Short Subsidiary has the same

investment objective as the Short Fund. References below to the holdings of the Short Fund are inclusive of the holdings of the direct holdings of the Short Fund as well as the indirect holdings of the Short Fund through the Subsidiary. Such positions are generally collateralized by the Fund's positions in cash and Cash Equivalents.²⁴

In order to achieve its investment objective, under Normal Market Conditions the Short Fund expects to hold the majority of its assets in Bitcoin Derivatives and cash and Cash Equivalents (which are used to collateralize Bitcoin Futures Contracts or other Bitcoin Derivatives), but may also invest in the following instruments: other Bitcoin Derivatives; U.S. exchange-listed ETPs; and Non-U.S. Component Stocks.²⁵ The Short Fund will use the cash and Cash Equivalents to meet asset coverage tests resulting from the Subsidiary's derivative exposure on a day-to-day basis. As a whole, the Short Fund's investments are meant to achieve its investment objective within the limitations of the federal tax requirements applicable to regulated investment companies.

The Short Fund intends to qualify each year as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.²⁶ The Short Fund will invest its assets (including via the Subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Investment Restrictions

While the Funds do not currently anticipate holding illiquid assets, each may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment)

deemed illiquid by the Adviser²⁷ under the 1940 Act.²⁸ Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).²⁹ Each Fund's investments will not be used to seek leveraged or inverse leveraged returns (*i.e.* two times or three times the Fund's benchmark). Each Fund's use of derivative instruments will be collateralized.

²⁷ In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

²⁸ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

²⁹ Each Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. *See* 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); *Dreyfus Strategic Investing*, Commission No-Action Letter (June 22, 1987); *Merrill Lynch Asset Management, L.P.*, Commission No-Action Letter (July 2, 1996).

²¹ For purposes of this filing, the term "ETP" means Portfolio Depository Receipts, Index Fund Shares, Linked Securities, Trust Issued Receipts, and Managed Fund Shares, as defined in Rule 14.11(b), 14.11(c), 14.11(d), 14.11(f), and 14.11(i), respectively, and the analogous products and listing rules on other national securities exchanges.

²² The Long Fund will not hold more than 25% of the weight of the portfolio in Non-U.S. Component Stocks.

²³ 26 U.S.C. 851.

²⁴ As defined in Rule 14.11(i)(4)(C)(iii), Cash Equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

²⁵ The Long Fund will not hold more than 25% of the weight of the portfolio in Non-U.S. Component Stocks.

²⁶ 26 U.S.C. 851.

Additional Information

As noted above, the Exchange submits this proposal in order to allow each Fund to hold: (i) Listed derivatives in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b);³⁰ and (ii) Non-U.S. Component Stocks in a manner that may not comply with Rule 14.11(i)(4)(C)(i)(b)(3)³¹ and (4).³² The Exchange, however, believes that the policy concerns that these rules are intended to address are mitigated as it relates to the Funds and their holdings for a number of reasons.

First, the policy concerns underlying all three rules are mitigated by the fact that the Exchange believes that the underlying reference asset is not susceptible to manipulation because the nature of the bitcoin ecosystem makes manipulation of bitcoin difficult. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, that the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons

this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; it is generally not possible to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin exchanges, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each exchange make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple bitcoin exchanges in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange. As a result, the potential for manipulation on a particular bitcoin exchange would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

Second, the Exchange believes that the concerns on which Rule 14.11(i)(4)(C)(iv)(b) are based related to ensuring that no single listed derivative and underlying reference asset that is susceptible to manipulation constitutes greater than 35% of the weight of the portfolio are further mitigated by the liquidity that the Exchange expects to exist in the market for Bitcoin Derivatives. This belief is based on numerous conversations with market

participants, issuers, and discussions with personnel of CFE. This expected liquidity in the market for Bitcoin Futures Contracts combined with the CFE, CME, and Exchange surveillance procedures related to the Bitcoin Futures, the Shares, and CFTC oversight, along with the difficulty in manipulating the bitcoin market described above will mitigate the concerns that Rule 14.11(i)(4)(C)(iv)(b) was designed to protect against and further prevent trading in the Shares from being susceptible to manipulation.

Third, the Exchange believes that the market cap and liquidity of the Non-U.S. Component Stocks held by the Funds along with a cap at 25% of each Fund's total assets that can be allocated to Non-U.S. Component Stocks would mitigate the concerns which Rules 14.11(i)(4)(C)(i)(b)(3) and (4) are intended to address. Any Non-U.S. Component Stock held by the Funds will have at least \$250 million in market cap and will have at least an average of \$100 million in monthly trading volume averaged over the past six months. This combination of large market cap with significant trading volume reduces the likelihood of manipulation of any particular security and the cap of 25% of the Fund's total assets assures that, while the Non-U.S. Component Stock holdings may not meet the concentration and diversity requirements of Rules 14.11(i)(4)(C)(i)(b)(3) and (4), respectively, such diversity and concentration requirements will not be met only for a limited portion of the portfolio.

The Exchange represents that, except for the diversification requirements for listed derivatives in Rule 14.11(i)(4)(C)(iv)(b) and the concentration and diversification requirements for Non-U.S. Component Stocks in a manner that may not co [sic] Rule 14.11(i)(4)(C)(i)(b)(3)³³ and (4), the Funds' proposed investments will satisfy, on an initial and continued listing basis, all of the generic listing standards under BZX Rule 14.11(i)(4)(C) and all other applicable requirements for Managed Fund Shares under Rule 14.11(i). The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares of the Funds. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the

³⁰ Rule 14.11(i)(4)(C)(iv)(b) provides that "the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures)." The Exchange is proposing that the Funds be exempt from the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

³¹ Rule 14.11(i)(4)(C)(i)(b)(3) provides that "the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio."

³² Rule 14.11(i)(4)(C)(i)(b)(4) provides that "where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 total component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares." While the Funds, as proposed, would be permitted to hold Derivative Securities Products or Linked Securities (both of which are ETPs, as defined below), they won't necessarily hold such instruments and may hold fewer than 20 Non-U.S. Component Stocks, which would not comply with this Rule.

³³ Rule 14.11(i)(4)(C)(i)(b)(3) provides that "the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio."

Exchange. In addition, the Exchange represents that the Shares of the Funds will comply with all other requirements applicable to Managed Fund Shares, which includes the dissemination of key information such as the Disclosed Portfolio,³⁴ Net Asset Value,³⁵ and the Intraday Indicative Value,³⁶ suspension of trading or removal,³⁷ trading halts,³⁸ surveillance,³⁹ minimum price variation for quoting and order entry,⁴⁰ and the information circular,⁴¹ as set forth in Exchange rules applicable to Managed Fund Shares. Moreover, at least 90% of the weight of the Bitcoin Derivatives held by each Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. Quotation, intra-day, closing and settlement prices of Bitcoin Derivatives will be readily available from their respective exchange or SEF, as applicable, as well as through automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation, intra-day, closing and settlement prices of U.S. exchange-listed ETPs will be readily available from the listing exchange, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Cash Equivalents is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect

violations of Exchange rules and the applicable federal securities laws. Additionally, the Bitcoin Derivatives will be subject to the rules and surveillance programs of their respective listing venue and the CFTC.⁴² Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Derivatives via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.⁴³ The Exchange may also obtain information regarding trading in the spot bitcoin market via exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement.⁴⁴ In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). The Exchange prohibits the distribution of material non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁴⁵ in general and Section 6(b)(5) of the Act⁴⁶ in particular in that

⁴² The CFTC issued a press release on December 1, 2017, noting the self-certifications from CFE and CME and highlighting the rigorous process that the CFTC had undertaken in its engagement with CFE and CME prior to the self-certification for the Bitcoin Futures Contracts. The press release focused on the ongoing surveillances that will occur on each listing exchange, including surveillance based on information sharing with the underlying cash bitcoin exchanges as well as the actions that the CFTC will undertake after the contracts are launched, including monitoring and analyzing the size and development of the market, positions and changes in positions over time, open interest, initial margin requirements, and variation margin payments, stress testing positions, conduct reviews of designated contract markets, derivatives clearing organizations, clearing firms, and individual traders involved in trading and clearing bitcoin futures. For more information, see <http://www.cftc.gov/PressRoom/PressReleases/pr7654-17>.

⁴³ For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. At least 90% of the weight of the Bitcoin Derivatives held by each Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

⁴⁴ See supra note 42.

⁴⁵ 15 U.S.C. 78f.

⁴⁶ 15 U.S.C. 78f(b)(5).

it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will meet each of the initial and continued listing criteria in BZX Rule 14.11(i) except that it each Fund may hold: (i) Listed derivatives in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b);⁴⁷ and (ii) Non-U.S. Component Stocks⁴⁸ in a manner that may not comply with Rule 14.11(i)(4)(C)(i)(b)(3)⁴⁹ and (4).⁵⁰ The

⁴⁷ Rule 14.11(i)(4)(C)(iv)(b) provides that "the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures)." The Exchange is proposing that the Funds be exempt from the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

⁴⁸ The term "Non-U.S. Component Stock" means an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

⁴⁹ Rule 14.11(i)(4)(C)(i)(b)(3) provides that "the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio."

⁵⁰ Rule 14.11(i)(4)(C)(i)(b)(4) provides that "where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 total component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares." While the Funds, as proposed, would be permitted to hold Derivative Securities Products or Linked Securities (both of which are ETPs, as defined below), they won't necessarily hold such instruments and may hold Non-U.S. Component Stocks, which would not comply with this Rule.

³⁴ See Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

³⁵ See Rule 14.11(i)(4)(A)(ii).

³⁶ See Rule 14.11(i)(4)(B)(i).

³⁷ See Rule 14.11(i)(4)(B)(iii).

³⁸ See Rule 14.11(i)(4)(B)(iv).

³⁹ See Rule 14.11(i)(2)(C).

⁴⁰ See Rule 14.11(i)(2)(B).

⁴¹ See Rule 14.11(i)(6).

Exchange, however, believes that the policy concerns that these rules are intended to address are mitigated as it relates to the Funds and their holdings for a number of reasons.

First, the policy concerns underlying all three rules are mitigated by the fact that the Exchange believes that the underlying reference asset is not susceptible to manipulation because the nature of the bitcoin ecosystem makes manipulation of bitcoin difficult. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and, in many instances, that the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; it is generally not possible to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin exchanges, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each exchange make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple bitcoin exchanges in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange. As a result,

the potential for manipulation on a particular bitcoin exchange would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

Second, the Exchange believes that the concerns on which Rule 14.11(i)(4)(C)(iv)(b) are based related to ensuring that no single listed derivative and underlying reference asset that is susceptible to manipulation constitutes greater than 35% of the weight of the portfolio are further mitigated by the liquidity that the Exchange expects to exist in the market for Bitcoin Futures Contracts. This belief is based on numerous conversations with market participants, issuers, and discussions with personnel of CFE. This expected liquidity in the market for Bitcoin Futures Contracts combined with the CFE, CME, and Exchange surveillance procedures related to the Bitcoin Futures, the Shares, and CFTC oversight, along with the difficulty in manipulating the bitcoin market described above will mitigate the concerns that Rule 14.11(i)(4)(C)(iv)(b) was designed to protect against and further prevent trading in the Shares from being susceptible to manipulation.

Third, the Exchange believes that the market cap and liquidity of the Non-U.S. Component Stocks held by the Funds along with a cap at 25% of each Fund's total assets that can be allocated to Non-U.S. Component Stocks would mitigate the concerns which Rules 14.11(i)(4)(C)(i)(b)(3) and (4) are intended to address. Any Non-U.S. Component Stock held by the Funds will have at least \$250 million in market cap and will have at least an average of \$100 million in monthly trading volume averaged over the past six months. This combination of large market cap with significant trading volume reduces the likelihood of manipulation of any particular security and the cap of 25% of the Fund's total assets assures that, while the Non-U.S. Component Stock holdings may not meet the concentration and diversity requirements of Rules 14.11(i)(4)(C)(i)(b)(3) and (4), respectively, such diversity and concentration requirements will not be met only for a limited portion of the portfolio.

Further, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the

applicable federal securities laws. Additionally, the Bitcoin Futures Contracts will be subject to the rules and surveillance programs of CFE, CME, and the CFTC. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Futures Contracts via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange may also obtain information regarding trading in the spot bitcoin market from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. The Exchange prohibits the distribution of material non-public information by its employees. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, nor are they currently affiliated with a broker-dealer. The Adviser personnel who make decisions regarding each Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding each Fund's portfolio. In the event that (a) the Adviser or Sub-Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, the Adviser or Sub-Adviser will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to

procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. At least 90% of the weight of the Bitcoin Derivatives held by each Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may obtain information regarding trading in the Shares and the underlying futures contracts held by the Funds via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Exchange expects that the market for Bitcoin Futures Contracts will be sufficiently liquid to support numerous ETPs shortly after launch. This belief is based on numerous conversations with market participants, issuers, and discussions with personnel of CFE. As such, the Exchange believes that the expected liquidity in the market for Bitcoin Derivatives combined with the Exchange surveillance procedures related to the Shares and the broader regulatory structure will prevent trading in the Shares from being susceptible to manipulation.

Because of its innovative features as a cryptoasset, bitcoin has gained wide acceptance as a secure means of exchange in the commercial marketplace and has generated significant interest among investors. In less than a decade since its creation in 2008, bitcoin has achieved significant market penetration, with payments giant PayPal and thousands of merchants and businesses accepting it as a form of commercial payment, as well as receiving official recognition from several governments, including Japan and Australia. Accordingly, investor interest in gaining exposure to bitcoin is increasing exponentially as well. As expected, the total volume of bitcoin transactions in the market continues to grow exponentially.

Despite the growing investor interest in bitcoin, the primary means for investors to gain access to bitcoin exposure remains either through the Bitcoin Derivatives or direct investment through bitcoin exchanges or over-the-counter trading. For regular investors simply wishing to express an

investment viewpoint in bitcoin, these methods of investment are complex and require active management and direct investment in bitcoin brings with it significant inconvenience, complexity, expense and risk. The Shares would therefore represent a significant innovation in the bitcoin market by providing an inexpensive and simple vehicle for investors to gain long or short exposure to bitcoin in a secure and easily accessible product that is familiar and transparent to investors. Such an innovation would help to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by improving investor access to bitcoin exposure through efficient and transparent exchange-traded derivative products.

In addition to improved convenience, efficiency and transparency, the Funds will also help to prevent fraudulent and manipulative acts and practices by enhancing the security afforded to investors as compared to a direct investment in bitcoin. Despite the extensive security mechanisms built into the Bitcoin network, a remaining risk to owning bitcoin directly is the need for the holder to retain and protect the "private key" required to spend or sell bitcoin after purchase. If a holder's private key is compromised or simply lost, their bitcoin can be rendered unavailable—*i.e.*, effectively lost to the investor. This risk will be eliminated by the Long Fund because the exposure to bitcoin is gained through cash-settled Bitcoin Derivatives that do not present any of the security issues that exist with direct investment in bitcoin.

The Funds expect that they will generally seek to remain fully exposed to Bitcoin Derivatives even during times of adverse market conditions. Under Normal Market Conditions, the Funds will generally hold only Bitcoin Derivatives and cash and Cash Equivalents (which are used to collateralize the Bitcoin Derivatives).

Additionally, the Funds may each hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available

markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Funds will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on the Fund's website including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Fund, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in BZX Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BZX Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which the Shares of each Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on Cash Equivalents are available from major

broker-dealer firms and from third-parties, which may provide prices free with a time delay, or “live” with a paid fee. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Fund. For Bitcoin Futures Contracts, such intraday information is available directly from the applicable listing exchange. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Pricing information related to money market fund shares will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. Money market fund shares are not generally priced or quoted on an intraday basis.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA’s TRACE. At least 90% of the weight of the Bitcoin Derivatives held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund’s holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will

enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register**, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve or disapprove the proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-2017-013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeBZX-2017-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2017-013 and should be submitted on or before January 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2017-28439 Filed 1-3-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82414; File No. SR-BOX-2017-38]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5050 To Extend the Pilot Program That Lists RealDay Options (“RealDay Pilot Program”)

December 28, 2017.

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 December 21, 2017, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁵¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5050 to extend the pilot program that lists RealDay Options ("RealDay Pilot Program"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5050(f) to extend the time period of the RealDay Pilot Program,³ which is currently scheduled to expire on February 2, 2018, through February 2, 2019.

This filing does not propose any substantive changes to the RealDay Pilot Program. In the original proposal to establish the RealDay Pilot Program, the Exchange stated that if it were to propose an extension, permanent approval or termination of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report containing an analysis of volume, open interest, and trading patterns in RealDay Options. In addition, the Exchange stated that pilot report would provide analysis of price volatility and trading activity in additional option series.

Because the industry has not finished developing the technology for clearing and settlement of RealDay Options and BOX has not launched this product,

there is no meaningful data available to compile the Pilot Report at this time and therefore the Exchange did not file a Pilot Report prior to this extension request. The Exchange believes it is appropriate to extend the RealDay Pilot Program to provide time for the industry to develop and implement the requisite technology so that the Exchange can prepare a meaningful Pilot Report if it were to propose any further extension, permanent approval or termination of the program.

As with the original proposal to establish the RealDay Pilot Program, the Exchange represents that the Pilot Report will be submitted within two (2) months of the end of the extended pilot period. The Pilot Report will contain the following volume and open interest data for RealDay Options:

- (1) Daily contract trading volume aggregated for all trades, for all option series with less than 31 days until expiration;
- (2) daily contract trading volume aggregated by expiration date, for all option series with less than 31 days until expiration;
- (3) daily contract trading volume for each individual series;
- (4) daily open interest aggregated for all series, for all option series with less than 31 days until expiration;
- (5) daily open interest aggregated for all series by expiration date, for all option series with less than 31 days until expiration;
- (6) daily open interest for each individual series;
- (7) statistics on the distribution of trade sizes;
- (8) type of market participant trading (e.g., contract trading volume for each market participant type); and
- (9) 5-minute returns, level changes, and trading volume for the S&P 500 Index, VIX, SPY, IVV, and expiring RealDay options between open and close for the first and second Wednesday of the month that is a trading day and trading days when standard SPY options expire.

In addition to the pilot report, the Exchange would periodically provide the Commission with interim reports of the information listed in items (1) through (9) above as required by the Commission while the pilot is in effect. These interim reports would also be provided on a confidential basis.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁴ in general, and Section 6(b)(5) of the

Act,⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the RealDay Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to introduce new and innovative products to the marketplace. Further, the Exchange believes that extending the RealDay Pilot Program will allow the industry to fully develop and implement the requisite technology for RealDay Options which will allow the Exchange to launch the Program in order to gather the requisite data for the above mentioned pilot report.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow the RealDay Pilot Program to continue while the industry develops the technology needed for RealDay Options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.⁶

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief

³ See Securities Exchange Act Release No. 79936 (February 2, 2017), 82 FR 9886 (February 8, 2017) (Order Granting Approval of a Proposed Rule Change To Amend Rule 5050 Series of Options Contracts Open for Trading To Provide for the Listing and Trading on the Exchange of RealDay).

⁴ 15 U.S.C. 78f(b).

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-BOX-2017-38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-BOX-2017-38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2017-38, and should be submitted on or before January 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2017-28436 Filed 1-3-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82423; File No. SR-CboeEDGA-2017-004]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Market Data Fees

December 29, 2017.

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 December 15, 2017, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee

schedule to lower the Internal Distribution⁵ fees and to adopt per User fees for the Cboe One Summary Feed.

The text of the proposed rule change is available at the Exchange's website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to lower the fee for Internal Distribution and to adopt separate fees for Professional⁶ and Non-Professional Users⁷ for the Cboe One Summary Feed.

The Cboe One Feed is an optional data feed that disseminates, on a real-

⁵ A "Distributor" is defined as "any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party." See the Exchange's fee schedule available at http://markets.cboe.com/us/equities/membership/fee_schedule/edga/. An "Internal Distributor" is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity." *Id.*

⁶ A "Professional User" is defined as "any User other than a Non-Professional User." See the Exchange's fee schedule available at http://markets.cboe.com/us/equities/membership/fee_schedule/edga/.

⁷ A "Non-Professional User" is currently defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." *Id.* See SR-CboeEDGA-2017-003 (filed December 15, 2017) (amending the definition of Non-Professional User to harmonize it with that of its affiliate exchanges, Cboe Exchange, Inc. and C2 Exchange, Inc. as of January 2, 2018).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on EDGA and its affiliated exchanges⁸ and for which they report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.⁹ The Cboe One Feed also contains the individual last sale information for the Cboe Equity Exchanges (collectively with the aggregate BBO, the “Cboe One Summary Feed”). In addition, the Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equity Exchanges for up to five (5) price levels (“Cboe One Premium Feed”).

The Exchange proposes to amend its fee schedule to lower the fee for Internal Distribution for the Cboe One Summary Feed and to adopt separate fees for Professional and Non-Professional Users.¹⁰ The Exchange does not propose to amend the fees for the Cboe One Premium Feed.

Distribution Fees. Currently, each Internal Distributor that receives the Cboe One Summary Feed is charged a fee of \$10,000 per month. The Exchange now proposes to lower the fee for Internal Distribution to \$1,500 per month.

User Fees. Like it does today for External Distributors, the Exchange proposes to adopt per User fees for Internal Distributors that receive the Cboe One Summary Feed. The Exchange currently charges External Distributors that redistribute the Cboe One Summary Feed different fees for their Professional Users and Non-Professional Users. Those fees are \$10.00 per month for each Professional Users and \$0.25 per month for each Non-Professional Users. To date, the Exchange has not charged per User fees to Internal Distributors for the Cboe One Summary Feed. To offset the proposed reduction to the monthly

Internal Distribution fee, the Exchange proposes to adopt per User fees for Internal Distribution, the amounts of each fee would be the same as the per User fees currently charged to External Distributors described above.

The Exchange also proposes to extend the current \$50,000 per month Enterprise Fee available to External Distributors of the Cboe One Summary Feed to Internal Distributors. In lieu of per User fees, the Enterprise fee will permit Internal Distributors who redistribute the Cboe One Summary Feed to an unlimited number of internal Professional and Non-Professional Users for a set fee of \$50,000 per month. For example, if an Internal Distributor had 15,000 Professional Users who each receive the Cboe One Summary Feed at \$10.00 per month, then that Internal Distributor will pay \$150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the Internal Distributor will pay a flat fee of \$50,000 for an unlimited number of internal Professional and Non-Professional Users of the Cboe One Summary Feed. An Internal Distributor that pays the Enterprise Fee will not have to report its number of such Users (as set forth below) on a monthly basis. However, every six months, an Internal Distributor must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Like for External Distributors, the Enterprise Fee for Internal Distributors would be in addition to the applicable Distribution Fee.

Like External Distributors of the Cboe One Summary Feed, Internal Distributors that receive the Cboe One Summary Feed will be required to count every Professional User and Non-Professional User to which they provide the Cboe One Summary Feed, the requirements for which are identical to that currently in place for External Distributors of the Cboe One Summary Feed and other market data products offered by the Exchange.¹¹ Thus, the Internal Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. Internal Distributors must report

all Professional and Non-Professional Users in accordance with the following:

- In connection with an Internal Distributor's distribution of the Cboe One Summary Feed, the Internal Distributor must count as one User each unique User that the Internal Distributor has entitled to have access to the Cboe One Summary Feed. However, where a device is dedicated specifically to a single individual, the Internal Distributor must count only the individual and need not count the device.
- The Internal Distributor must identify and report each unique User. If a User uses the same unique method to gain access to the Cboe One Summary Feed, the Internal Distributor must count that as one User. However, if a unique User uses multiple methods to gain access to the Cboe One Summary Feed (e.g., a single User has multiple passwords and user identifications), the Internal Distributor must report each of those methods as an individual User.
- Internal Distributors must report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an Internal Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count.

Implementation Date

The Exchange intends to implement the proposed fees on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹² in general, and furthers the objectives of Section 6(b)(4),¹³ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act¹⁴ in that it supports (i) fair competition among

⁸ EDGA's affiliated exchanges are Cboe BYX Exchange, Inc. (“BYX”), Cboe EDGX Exchange, Inc. (“EDGX”), and Cboe BZX Exchange, Inc. (“BZX”, together with EDGX, EDGA, and BYX, the “Cboe Equity Exchanges”).

⁹ See Exchange Rule 11.22(j). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe One Feed) (“Cboe One Approval Order”).

¹⁰ The Exchange also proposes a non-substantive, immaterial change to the fee table headings to conform to other heading within the Market Data Section of the fee schedule. In particular, the Exchange proposes to change the term “Distributor” to “Distribution” in both the Internal Distributor and External Distributor headings under the Cboe One Feed.

¹¹ See Securities Exchange Act Release Nos. 74283 (February 18, 2015); 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09) (proposing fees for the Bats One Feed); 75395 (July 8, 2015), 80 FR 41126 (July 14, 2015) (SR-EDGA-2015-25) (proposing user fees for the EDGA Top and Last Sale data feeds); and 75787 (August 28, 2015), 80 FR 53370 (September 3, 2015) (SR-EDGA-2015-34) (proposing fees for EDGA Book Viewer).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78k-1.

brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁵ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors who subscribe to the Cboe One Summary Feed will be subject to the proposed fees. The Cboe One Summary Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the Cboe One Summary Feed further ensure that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. For example, the Cboe One Summary Feed provides investors with alternative market data and competes with similar market data

product currently offered by other exchanges. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to create the Cboe One Summary Feed, prospective Users likely would not subscribe to, or would cease subscribing to either market data product.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.¹⁶

The Exchange believes that lowering the Internal Distribution fee for the Cboe One Summary Feed is equitable and reasonable because the lower fee coupled with the adoption of per User fees is designed to provide a price structure for Internal Distributors that is competitive and attracts additional subscribers to each market data feed. The Exchange also believes that it is reasonable to charge a lower fee to Internal Distributors than External Distributors because External Distributors redistribute the data to their subscribers for a fee while Internal Distributors do not.

The Exchange believes that implementing the Professional and Non-Professional User fees for the Cboe One

¹⁶ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

Summary Feed are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. The addition of per User fees also enables the fee for Internal Distribution, thereby lowering their overall costs where the number of Users they account for is low. Moreover, introducing a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional investors to access the data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal Distributors and Users. The Exchange notes that the amount of the per User fees for Internal Distribution equal those charged for External Distribution for the Cboe One Summary Feed.

The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Cboe One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.¹⁷ Offering the Cboe One Summary Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

The proposed expansion of the Enterprise Fee to Internal Distributors of the Cboe One Summary Feed is reasonable because it could result in a fee reduction for Internal Distributors with a large number of Professional and Non-Professional Users. If an Internal Distributor has a smaller number of Professional Users of the Cboe One Summary Feed, then it may continue using the per User structure. By reducing prices for Internal Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more Internal Distributors may choose to receive and to distribute the Cboe One Summary Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable

¹⁷ See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) ("Initial Cboe One Feed Fee Filings"). See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); and Nasdaq Rules 7023(b) and 7047.

¹⁵ 17 CFR 242.603.

because it will simplify reporting for certain Internal Distributors that have large numbers of Professional and Non-Professional Users. Internal Distributors that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

(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 Exchange's ability to price the Cboe One Summary Feed is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow. The Cboe One Summary Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The Cboe One Summary Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.¹⁸

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the Cboe One Summary Feed ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Lastly, the Exchange represents that the proposed pricing of the Cboe One Summary Feed provides investors with alternative market data and competes with similar market data product currently offered by other exchanges.¹⁹ In addition, the Exchange notes the concerns regarding whether a competing vendor could create a similar product on the same price basis as the Exchange are not present here. The proposed changes are limited to fees for Internal Distributors who use the data for internal use only and not for the redistribution and sale to external parties.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

to the FINRA/Nasdaq Trade Reporting Facility ("TRF"); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish the NYSE Best Quote & Trades ("BQT") Data Feed); <https://www.nyse.com/market-data/real-time/nyse-bqt> (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

¹⁹ *Id.*

of the Act²⁰ and paragraph (f) of Rule 19b-4 thereunder.²¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGA-2017-004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeEDGA-2017-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

¹⁸ See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQbasic> (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported

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–2017–004 and should be submitted on or before January 25, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2017–28494 Filed 1–3–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10251]

Notice of Public Meeting

The Department of State will conduct an open meeting at 9:00 a.m. on Wednesday, January 24, 2018, in Room 6K15–15 of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593. The primary purpose of the meeting is to prepare for the fifth session of the International Maritime Organization's (IMO) Sub-Committee on Pollution Prevention and Response (PPR 5) to be held at the IMO Headquarters, United Kingdom, on February 5–9, 2018.

The agenda items to be considered include:

- Adoption of the agenda
- Decisions of other IMO bodies
- Safety and pollution hazards of chemicals and preparation of consequential amendments to the IBC Code
- Review of MARPOL Annex II requirements that have an impact on cargo residues and tank washings of high viscosity and persistent floating products
- Revised guidance on ballast water sampling and analysis
- Revised guidance on methodologies that may be used for enumerating viable organisms
- Consideration of the impact on the Arctic of emissions of Black Carbon from international shipping
- Standards for shipboard gasification of waste systems and associated amendments to regulation 16 of MARPOL Annex VI
- Guidelines for the discharge of exhaust gas recirculation bleed-off water

- Revised certification requirements for SCR systems under the NO_x Technical Code
- Review of the 2015 Guidelines for Exhaust Gas Cleaning Systems (resolution MEPC.259(68))
- Amendments to regulation 14 of MARPOL Annex VI to require a dedicated sampling point for fuel oil
- Consistent implementation of regulation 14.1.3 of MARPOL Annex VI
- Revised Guidelines for the application of MARPOL Annex I requirements to FPSOs and FSUs
- Review of the IBTS Guidelines and amendments to the IOPP Certificate and Oil Record Book
- Updated IMO Dispersant Guidelines (Part IV)
- Guide on practical methods for the implementation of the OPRC Convention and the OPRC–HNS Protocol
- Use of electronic record books
- Consideration of an initial proposal to amend annex 1 to the AFS Convention to include controls of cybutryne
- Unified interpretation to provisions of IMO environment-related Conventions
- Biennial status report and provisional agenda for PPR 6
- Election of Chair and Vice-Chair for 2019
- Any other business
- Report to the Marine Environmental Protection Committee

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference, up to the capacity of the teleconference phone line. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 887 809 72. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. Patrick Keffler, by email at Patrick.A.Keffler@uscg.mil, by phone at (202) 372–1424, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington DC 20593–7509, not later than January 17, 2018, five business days prior to the meeting. Requests made after January 17, 2018 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters building. The building is accessible by taxi,

public transportation, and privately owned conveyance (parking is available upon request).

Peter J. Ganser,

Senior Advisor, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2017–28462 Filed 1–3–18; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 10250]

Notice of Renewal of the Charter of the Department of State's Advisory Committee on Private International Law

The Department of State has renewed the Charter of the Advisory Committee on Private International Law. Through the Committee, the Department of State obtains the views of the public with respect to significant private international law issues that arise in international organizations of which the United States is a Member State, in international bodies in whose work the United States has an interest, or in the foreign relations of the United States.

The Committee is comprised of representatives from other government agencies, representatives of national organizations, and experts and professionals active in the field of international law.

Comments should be sent to the Office of the Assistant Legal Adviser for Private International Law at PIL@state.gov. Copies of the draft Charter may be obtained by contacting Tricia Smeltzer at smeltzertk@state.gov.

Michael S. Coffee,

Attorney- Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2017–28461 Filed 1–3–18; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing Changes for 2018 United States Mint Numismatic Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

The United States Mint is announcing pricing changes for some 2018 United States Mint Numismatic Products. Please see the table below:

²² 17 CFR 200.30–3(a)(12).

Product	2018 Retail price
United States Mint Proof Set®	\$27.95
United States Mint Silver Proof Set®	49.95
United States Mint Uncirculated Coin Set®	21.95
United States Mint America the Beautiful Quarters Proof Set™	15.95
United States Mint America the Beautiful Quarters Silver Proof Set™	33.95
United States Mint Limited Edition Silver Proof Set™	144.95
United States Mint America the Beautiful Uncirculated Set™	13.95
United States Mint America the Beautiful Circulating Set™	8.95
United States Mint America the Beautiful Five Ounce Silver Uncirculated Coin™	154.95
United States Mint American Eagle One Ounce Silver Proof Coin™	55.95
United States Mint American Eagle One Ounce Silver Uncirculated Coin™	46.95
United States Mint American Eagle Bulk Pack	11,749.50
United States Mint Congratulations Set™	56.95

FOR FURTHER INFORMATION CONTACT:

Katrina McDow, Marketing Specialist,
Numismatic and Bullion Directorate;
United States Mint; 801 9th Street NW;
Washington, DC 20220; or call 202–354–
8495.

Authority: 31 U.S.C. 5111, 5112, 5132 &
9701.

Dated: December 29, 2017.

Jon J. Cameron,

*Associate Director for Numismatic and
Bullion, United States Mint.*

[FR Doc. 2017–28496 Filed 1–3–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0390]

Agency Information Collection Activity Under OMB Review: Application of Surviving Spouse or Child for REPS Benefits

AGENCY: Veterans Benefits
Administration, Department of Veterans
Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 5, 2018.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer, 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to oira_submission@omb.eop.gov. Please refer to “OMB Control No. 2900–0390” in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk, Department of Veterans Affairs, 811 Vermont Avenue, Floor 5, Area 368, Washington, DC 20420, (202) 461–5870 or email cynthia.harvey-pryor@va.gov. Please refer to “OMB Control No. 2900–0390” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 402, E.O. 12436, Public Law 97–377 Section 156.

Title: Application of Surviving Spouse or Child for REPS Benefits (VA Form 21P–8924).

OMB Control Number: 2900–0390.

Type of Review: Extension without change of a currently approved collection.

Abstract: Restored Entitlement Program for Survivors (REPS) benefits are payable to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. Child beneficiaries over age 18 and under age 23 must be enrolled full-time in an approved post-secondary school.

Executive Order 12436 “Payment of Certain Benefits to Survivors of Persons Who Died In or As A Result of Military Service” (found at 42 U.S.C. 402 (Note)) directs VA administer the provisions of Public Law 97–377 Section 156. VA codified this authority at 38 CFR 3.812.

VBA uses VA Form 21P–8924 to evaluate the eligibility of surviving spouses and children to REPS benefits, including information regarding the claimant’s relationship to the Veteran, employment status, and earnings. Based on the information contained in the form, VBA makes decisions to grant, deny, or amend existing, benefits payments. The VA Form number is being changed to “21P–8924” to reflect Pension and Fiduciary Service’s responsibility for the form.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 48748 on October 19, 2017.

Affected Public: Individuals and households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden per

Respondent: 20 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 1,800.

By direction of the Secretary.

Cynthia Harvey-Pryor,

*Department Clearance Officer, Office of
Quality, Privacy and Risk, Department of
Veterans Affairs.*

[FR Doc. 2017–28463 Filed 1–3–18; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 83

Thursday,

No. 3

January 4, 2018

Part II

The President

Proclamation 9688—National Slavery and Human Trafficking Prevention Month, 2018

Presidential Documents

Title 3—

Proclamation 9688 of December 29, 2017

The President

National Slavery and Human Trafficking Prevention Month, 2018

By the President of the United States of America

A Proclamation

During National Slavery and Human Trafficking Prevention Month, we recommit ourselves to eradicating the evil of enslavement. Human trafficking is a modern form of the oldest and most barbaric type of exploitation. It has no place in our world. This month we do not simply reflect on this appalling reality. We also pledge to do all in our power to end the horrific practice of human trafficking that plagues innocent victims around the world.

Human trafficking is a sickening crime at odds with our very humanity. An estimated 25 million people are currently victims of human trafficking for both sex and labor. Human traffickers prey on their victims by promising a life of hope and greater opportunity, while delivering only enslavement. Instead of delivering people to better lives, traffickers unjustifiably profit from the labor and toil of their victims, who they force—through violence and intimidation—to work in brothels and factories, on farms and fishing vessels, in private homes, and in countless industries.

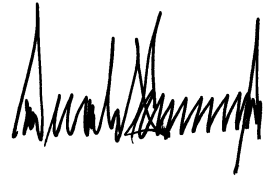
My Administration continues to work to drive out the darkness human traffickers cast upon our world. In February, I signed an Executive Order to dismantle transnational criminal organizations, including those that perpetuate the crime of human trafficking. My *Interagency Task Force to Monitor and Combat Trafficking in Persons* has enhanced collaboration with other nations, businesses, civil society organizations, and survivors of human trafficking. The Department of Health and Human Services has established a new national training and technical assistance center to strengthen our healthcare industry's anti-trafficking response. The Department of State has contributed \$25 million to the Global Fund to End Modern Slavery, because of the critical need for cross-nation collaborative action to counter human trafficking. The Department of Labor has released an innovative, business-focused mobile app that supports private-sector efforts to eradicate forced labor from global supply chains. And this month, I will sign into law S. 1536, the Combating Human Trafficking in Commercial Vehicles Act and S. 1532, the No Human Trafficking on Our Roads Act. These bills will keep those who commit trafficking offenses from operating commercial vehicles, improve anti-human trafficking coordination within Federal agencies and across State and local governments, and improve efforts to recognize, prevent, and report human trafficking.

In addition to these governmental actions, Americans must learn how to identify and combat the evil of enslavement. This is especially important for those who are most likely to encounter the perpetrators of slavery and their victims, including healthcare providers, educators, law enforcement officials, and social services professionals. Through the Department of Homeland Security's Blue Campaign, all Americans can learn to recognize the signs of human trafficking and how to report suspected instances. By taking steps to become familiar with the telltale signs of traffickers or the signals of their victims, Americans can save innocent lives.

Our Nation is and will forever be a place that values and protects human life and dignity. This month, let us redouble our efforts to ensure that modern day slavery comes to its long overdue end.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2018 as National Slavery and Human Trafficking Prevention Month, culminating in the annual celebration of National Freedom Day on February 1, 2018. I call upon industry associations, law enforcement, private businesses, faith-based and other organizations of civil society, schools, families, and all Americans to recognize our vital roles in ending all forms of modern slavery and to observe this month with appropriate programs and activities aimed at ending and preventing all forms of human trafficking.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of December, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.

A handwritten signature in black ink, appearing to be "Donald Trump", located at the bottom right of the page.

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Federal Register

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