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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0113; Product Identifier 2017–NM–060–AD; Amendment 39–19710; AD 2019–16–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2016–12–09, which applied to certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2016–12–09 requirements included removing existing and installing new fasteners, inspecting for and, if necessary, repairing cracking. This new AD requires repetitive inspections of the fastener holes at a certain frame and applicable on-condition actions, and, for certain airplanes, requires a modification, as specified in European Union Aviation Safety Agency (EASA) ADs, which are incorporated by reference. Also as specified in the EASA ADs, this AD also provide an optional terminating action for certain airplanes, which terminates the inspections. This AD was prompted by reports that cracks were found on an adjacent hole of certain frames of the center wing box (CWB) and a determination that the compliance time specified in AD 2016–12–09 for the modification of the inside CWB must be revised. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective October 22, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 22, 2019.

**ADDRESSES:** For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0113.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0113; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0249R1, dated July 31, 2019; corrected August 2, 2019 (''EASA AD 2018–0249R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2016–12–09, Amendment 39–18558 (81 FR 38573, June 14, 2016) (''AD 2016–12–09''). AD 2016–12–09 applied to certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes, and Model A340–200 and -300 series airplanes. The SNPRM published in the **Federal Register** on May 23, 2019 (84 FR 23742) (''the SNPRM''). The FAA preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on February 26, 2018 (83 FR 8201) (''the NPRM''). The NPRM was prompted by reports that cracks were found on an adjacent hole of certain frames of the CWB. The NPRM proposed to require repetitive inspections of the fastener holes at frame (FR) 40, and, for certain airplanes, proposed to require a modification. The NPRM also proposed to provide an optional terminating action for certain airplanes, which terminates the inspections. The SNPRM proposed to revise the compliance time for the modification of the inside CWB. The FAA is issuing this AD to address cracking of certain holes of certain frames of the CWB, which could affect the structural integrity of the airplane.

### Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the SNPRM or on the determination of the cost to the public.

### New EASA AD

In the SNPRM, the FAA referred to EASA AD 2018–0249, dated November 16, 2018 (''EASA AD 2018–0249''). Since the SNPRM was issued, EASA issued EASA AD 2018–0249R1, which clarifies the conditions for certain actions and removes paragraphs that are not necessary.

The FAA determined that no additional work is required for airplanes that have accomplished the actions as required by EASA AD 2018–0249. Therefore, the FAA has revised all applicable sections in this final rule to also specify EASA AD 2018–0249R1.

### Change Made to This Final Rule

The SNPRM included a terminating action paragraph for AD 2016–12–09 (paragraph (j) of the proposed AD). However, AD 2016–12–09 is superseded by this AD; therefore, that terminating action paragraph is not needed. We have removed paragraph (j) of the proposed AD from this AD.

**Conclusion**

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

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

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

**Related IBR Material Under 1 CFR Part 51**

EASA ADs 2018–0249 and 2018–0249R1 describe procedures for repetitive inspections of the fastener holes at the FR40 vertical web of the affected CWB lower panel area for any cracking, and on-condition actions; modification of the inside CWB and an optional terminating action (modification of fastener holes by cold-working), which terminates the repetitive inspections. On-condition actions include installing new fasteners, additional inspections, repair, and modification. These documents are distinct since AD 2018–0249R1 clarifies the conditions for certain actions, removes paragraphs that are not necessary, and provides credit for certain alternative methods of compliance. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 103 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Retained actions from AD 2016–12–09. | Up to 155 work-hours × $85 per hour = Up to $13,175. | $0 | Up to $13,175 | Up to $1,357,025. |
| New actions | Up to 145 work-hours × $85 per hour = Up to $12,325. | Up to $650 | Up to $12,975 | Up to $1,336,425. |

ESTIMATED COSTS FOR OPTIONAL ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| Up to 145 work-hours × $85 per hour = Up to $12,325 | Up to $621 | Up to $12,946. |

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| Up to 105 work-hours × $85 per hour = Up to $8,925 | Up to $22,488 | Up to $31,413. |

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–12–09, Amendment 39–18558 (81 FR 38573, June 14, 2016), and adding the following new AD:

**2019–16–07 Airbus SAS:** Amendment 39–19710; Docket No. FAA–2018–0113; Product Identifier 2017–NM–060–AD.

**(a) Effective Date**

This AD is effective October 22, 2019.

**(b) Affected ADs**

This AD replaces AD 2016–12–09, Amendment 39–18558 (81 FR 38573, June 14, 2016) (''AD 2016–12–09'').

**(c) Applicability**

This AD applies to Airbus SAS Model airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2018–0249R1, dated July 31, 2019; corrected August 2, 2019 (''EASA AD 2018–0249R1'').

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

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

(4) Model A340–211, –212, and –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Reason**

This AD was prompted by reports that cracks were found on an adjacent hole of certain frames of the center wing box (CWB) and a determination that the compliance time specified in AD 2016–12–09 for the modification of the inside CWB must be revised. The FAA is issuing this AD to address cracking of certain holes of certain frames of the CWB, which could affect the structural integrity of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0249, dated November 16, 2018 (''EASA AD 2018–0249'') or EASA AD 2018–0249R1.

**(h) Exceptions to EASA ADs 2018–0249 and 2018–0249R1**

(1) For purposes of determining compliance with the requirements of this AD: Where EASA ADs 2018–0249 and 2018–0249R1 refer to the effective date of EASA AD 2018–0249 or the effective date of EASA AD 2017–0069, this AD requires using the effective date of this AD.

(2) For purposes of determining compliance with the requirements of this AD: Where EASA ADs 2018–0249 and 2018–0249R1 refer to the effective date of EASA AD 2014–0149, this AD requires using June 29, 2016 (the effective date of AD 2016–12–09).

(3) The ''Remarks'' sections of EASA ADs 2018–0249 and 2018–0249R1 do not apply to this AD.

(4) The EASA alternative method of compliance (AMOC) approvals specified in paragraph (15) of EASA AD 2018–0249R1 do not apply to this AD.

**(i) Reference to Manufacturer Serial Numbers for Airbus Technical Dispositions**

Figure 1 to paragraph (i) of this AD identifies the Airbus Technical Dispositions specified in paragraph (9) of EASA ADs 2018–0249 and 2018–0249R1 and their associated manufacturer serial numbers.

**Figure 1 to paragraph (i)–** *Airbus Technical Dispositions*

| Airbus Technical Disposition | Manufacturer Serial Numbers (MSN) |
|---|---|
| Airbus Technical Disposition LR57D11023270 | MSN 0176 through 0512 inclusive, 0522 |
| Airbus Technical Disposition LR57D11023714 | MSN 0176 through 0512 inclusive, 0522 |
| Airbus Technical Disposition LR57D11029170 | MSN 0001 through 0175 inclusive |
| Airbus Technical Disposition LR57D11029171 | MSN 0001 through 0175 inclusive |
| Airbus Technical Disposition LR57D11029172 | MSN 0176 through 0512 inclusive, 0522 |
| Airbus Technical Disposition LR57D11029173 | MSN 0176 through 0512 inclusive, 0522 |
| Airbus Technical Disposition LR57D11030740 | MSN 0001 through 0175 inclusive |
| Airbus Technical Disposition LR57D11030741 | MSN 0001 through 0175 inclusive |

**(j) No Reporting Requirement**

Although the service information referenced in EASA ADs 2018–0249 and 2018–0249R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-116-AMOC–REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC*): For any service information referenced in EASA AD 2018–0249 or EASA AD 2018–0249R1 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(l) Related Information**

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

**(m) Material Incorporated by Reference**

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

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

(i) European Aviation Safety Agency (EASA) AD 2018–0249, dated November 16, 2018.

(ii) European Union Aviation Safety Agency (EASA) AD 2018–0249R1, dated July 31, 2019; corrected August 2, 2019.

(3) For EASA AD 2018–0249 and EASA AD 2018–0249R1, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu*. You may find these EASA ADs on the EASA website at *https://ad.easa.europa.eu.*

**Note 1 to paragraph (m)(3):** EASA AD 2018–0249 can be accessed in the zipped file at the bottom of the web page for EASA AD 2018–0249R1. When EASA posts a revised AD on their website, they watermark the previous AD as ''Revised,'' alter the file name by adding ''_revised'' to the end, and move it into a zipped file attached at the bottom of the AD web page.

(4) You may view these EASA ADs at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0249 and EASA AD 2018–0249R1 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0113.

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

Issued in Des Moines, Washington, on August 9, 2019.

**Michael Kaszycki,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–19913 Filed 9–16–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2019–0769]**

**RIN 1625–AA00**

## Safety Zone; Lake of the Ozarks, Lake Ozark, MO

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the Lake of the Ozarks within 300 feet of the fireworks barge in the vicinity of mile marker 7.0. This action is necessary to provide for the safety of life on these navigable waters near the Camden on the Lake Resort, Lake Ozark, MO, during a fireworks display. This rulemaking will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

**DATES:** This rule is effective from 9:30 p.m. through 10:30 p.m. on September 28, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0769 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2560, email *Christian.J.Barger@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by September 28, 2019, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay establishment of the safety zone until after the date of the firework display and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of

this rule would be contrary to public interest because immediate action is necessary to respond to the potential safety hazards associated with the firework display over the Lake of the Ozarks.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the firework display over the Lakes of the Ozarks will be a safety concern for anyone in the zone. This rule is needed to protect persons, vessels, and the marine environment on the navigable waters within the safety zone while the firework display is being conducted.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9:30 p.m. through 10:30 p.m. on September 28, 2019. The safety zone will cover all navigable waters within 300 feet of the fireworks barge located on the Lake of the Ozarks in the vicinity of mile marker 7.0.

The duration of this safety zone is intended to protect persons, vessels, and the marine environment on these navigable waters while the fireworks display is being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River. To seek entry into the safety zone, contact the COTP or the COTP's designated representative by telephone at 314–269–2332. Persons and vessels permitted to enter the zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

The COTP or a designated representative will inform the public of the enforcement period for this safety zone, through Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts less than a one mile stretch of the Lake of the Ozarks for one hour on September 28, 2019. Additionally this rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator because the rule will allow persons and vessels to seek permission to enter the zone and entry may be arranged on a case by case basis.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only one hour on September 28, 2019 and will prohibit entry through a fireworks display. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0760 to read as follows:

**§ 165.T08–0760 Safety Zone; Lake of the Ozarks, Lake Ozark, MO.**

(a) *Location.* The following area is a safety zone: Navigable waters within 300 feet of a fireworks barge on the Lake of the Ozarks near mile marker 7.0.

(b) *Period of Enforcement.* This section will be enforced from 9:30 p.m. through 10:30 p.m. on September 28, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the representative by telephone at 314–269–2332.

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

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement dates and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone, through Local Notices to Mariners (LNM) and/or Marine Safety Information Bulletins (MSIB) as appropriate.

Dated: September 11, 2019.

**R.M. Scott,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Sector Upper Mississippi River.*

[FR Doc. 2019–20004 Filed 9–16–19; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2019–0667]**

## Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Head of the Cuyahoga Regatta located in the federal regulations for Annual Events in the Captain of the Port Buffalo zone. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after this event. During the enforcement period, no person or vessel may enter the safety zone without the permission of the Captain of the Port Buffalo.

**DATES:** The regulations in 33 CFR 165.939(d)(3) will be enforced from 7 a.m. through 5 p.m. on September 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, contact LT William Fitzgerald, Chief of Waterways Management, U.S. Coast Guard MSU Cleveland, via telephone at 216–937–0124 or email *D09-SMB-MSUCleveland-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone for the Head of the Cuyahoga Regatta as listed in 33 CFR 165.939(d)(3) from 7 a.m. through 5 p.m. on September 21, 2019.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or a designated representative. Those seeking permission to enter the safety zones may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zones shall obey the directions of the Captain of the Port Buffalo or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: August 29, 2019.

**L.M. Littlejohn,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2019–19946 Filed 9–16–19; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2018–0125; FRL–9999–47—Region 5]**

## Air Plan Approval; Ohio; Revisions to $NO_X$ SIP Call and CAIR Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving under the Clean Air Act (CAA) a request from the Ohio Environmental Protection Agency (Ohio EPA) to revise the Ohio State Implementation Plan (SIP) to incorporate revisions to Ohio Administrative Code (OAC) Chapter 3745–14 regarding the Nitrogen Oxides ($NO_X$) SIP Call and the removal of OAC Chapter 3745–109 regarding the Clean Air Interstate Rule (CAIR). This SIP revision ensures continued compliance by Electric Generating Units (EGUs) and large non-EGUs with the requirements of the $NO_X$ SIP Call.

**DATES:** This final rule is effective on October 17, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0125. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

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



### I. Summary of Proposed Action

Under CAA section 110(a)(2)(D)(i)(I), called the good neighbor provision, states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state from contributing significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS), or interfering with maintenance of the NAAQS, in any other state.

On October 27, 1998, EPA published the $NO_X$ SIP Call, which required eastern states, including Ohio, to submit SIPs that prohibit excessive emissions of ozone season $NO_X$ by implementing statewide emissions budgets (63 FR 57356). The $NO_X$ SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported $NO_X$ emissions, one of the precursors of ozone. EPA developed the $NO_X$ Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the $NO_X$ SIP Call. This trading program allowed certain EGUs and large non-EGUs to participate in a regional cap and trade program. In fulfillment of the requirements of the $NO_X$ SIP Call, Ohio EPA promulgated OAC Chapter 3745–14 which, among other things, required EGUs and large non-EGUs in the state to participate in the $NO_X$ Budget Trading Program. On August 5, 2003, EPA published an action approving OAC Chapter 3745–14 into the Ohio SIP (68 FR 46089).

On May 12, 2005, EPA published CAIR, which required eastern states, including Ohio, to submit SIPs that prohibited emissions consistent with annual and ozone season $NO_X$ budgets and annual sulfur dioxide ($SO_2$) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS. Like the $NO_X$ SIP Call, CAIR also established several trading programs that states could use as mechanisms to comply with the budgets. When the CAIR trading program for ozone season $NO_X$ was implemented beginning in 2009, EPA discontinued administration of the $NO_X$ Budget Trading Program, but the requirements of the $NO_X$ SIP Call continued to apply. To meet the requirements of CAIR, Ohio EPA promulgated OAC Chapter 3745–109, which required EGUs to participate in the CAIR annual $SO_2$ and annual and ozone season $NO_X$ trading programs. Participation by EGUs in the CAIR trading program for ozone season $NO_X$ addressed the state's obligation under the $NO_X$ SIP Call for those units. Ohio EPA also opted to incorporate large non-EGUs previously regulated under OAC Chapter 3745–14 into OAC Chapter 3745–109, to meet the obligations of the $NO_X$ SIP Call with respect to those units through the CAIR trading program as well. On September 25, 2009, EPA published an action approving OAC Chapter 3745–109 into the Ohio SIP (74 FR 48857).

On August 8, 2011, EPA published the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS (76 FR 48208). Through Federal Implementation Plans (FIPs), CSAPR required EGUs in eastern states, including Ohio, to meet annual and ozone season $NO_X$ budgets and annual $SO_2$ budgets implemented through new trading programs. CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season $NO_X$ generally addressed the state's obligation under the $NO_X$ SIP Call for EGUs. However, CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the $NO_X$ SIP Call for non-EGUs.

EPA stopped administering the CAIR trading programs with respect to emissions occurring after December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.

On October 26, 2016, EPA published the CSAPR Update, which established a new ozone season $NO_X$ trading program for EGUs in eastern states, including Ohio, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). As under CSAPR, participation by a state's EGUs in the new CSAPR trading program for ozone season $NO_X$ generally addressed the state's obligation under the $NO_X$ SIP Call for EGUs. The CSAPR Update also expanded options available to states for meeting $NO_X$ SIP Call requirements for large non-EGUs by allowing states to

incorporate those units into the new trading program.

After evaluating the various options available following CSAPR Update, Ohio EPA chose to meet the ongoing $NO_X$ SIP Call requirements for existing and new large non-EGUs by modifying its existing regulations at OAC Chapter 3745–14 to make the portion of the budget assigned to large non-EGUs under that program enforceable without an allowance trading mechanism.

Specifically, while Ohio rescinded portions of its $NO_X$ Budget Trading Program rules under OAC Chapter 3745–14 pertaining to individual unit allowance allocations and trading, the state retained and amended the provisions of those rules pertaining to applicability, the statewide emissions budgets for EGUs and large non-EGUs, and monitoring and reporting under 40 CFR part 75. Ohio also retained a provision of the trading program rules exempting EGUs covered by a more recent ozone season $NO_X$ trading program from coverage under the state's amended program, but updated the provision to base the exemption on participation in the CSAPR Update trading program for ozone season $NO_X$ instead of the corresponding CAIR trading program. In addition, Ohio retained other rules under OAC Chapter 3745–14 addressing $NO_X$ emissions from cement kilns and stationary internal combustion engines outside the $NO_X$ Budget Trading Program. Finally, Ohio also rescinded its CAIR trading program rules in OAC Chapter 3745–109 in full.

Ohio's February 5, 2018 submission requests that EPA update Ohio's SIP to reflect the revised rules at OAC Chapter 3745–14 and the rescission of rules at OAC Chapter 3745–109. On June 27, 2019, EPA proposed to approve Ohio's request (84 FR 30681). EPA's proposed rule contains a detailed analysis of Ohio's submission.

## II. What comments did EPA receive?

In response to our proposed rule, EPA received one comment, submitted on behalf of the Ohio Utilities and Generation Group and its member companies. This comment was supportive of EPA's proposed action. Therefore, EPA is finalizing this action as proposed.

## III. What actions is EPA taking?

EPA is approving Ohio EPA's request to modify its SIP to include the revisions at OAC Chapter 3745–14 and to remove OAC Chapter 3745–109.

## IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, EPA is finalizing the removal of provisions of the EPA-Approved Ohio Regulations and Statutes from the Ohio SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2019. Filing a petition for reconsideration by the

[1] 62 FR 27968 (May 22, 1997).

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: August 27, 2019.

**Cathy Stepp,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (c) is amended by:

■ a. Revising the section entitled ''Chapter 3745–14 Nitrogen Oxides—Reasonably Available Control Technology''; and

■ b. Removing the section entitled ''Chapter 3745–109 Emissions Trading Programs''.

The revision reads as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED STATE OHIO REGULATIONS

| Ohio citation | Subject | Ohio effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| **Chapter 3745–14 Nitrogen Oxides—Reasonably Available Control Technology** | | | | |
| 3745–14–01 ..... | Definitions and General Provisions | 1/28/2018 | 9/17/19, [insert **Federal Register** citation]. | |
| 3745–14–03 ..... | The $NO_X$ Budget Permit Requirements. | 1/28/2018 | 9/17/19, [insert **Federal Register** citation]. | |
| 3745–14–04 ..... | Compliance Certification ..... | 1/28/2018 | 9/17/19, [Insert **Federal Register** citation]. | |
| 3745–14–08 ..... | Monitoring and Reporting ..... | 1/28/2018 | 9/17/19, [insert **Federal Register** citation]. | |
| 3745–14–11 ..... | Portland Cement Kilns ..... | 7/18/2002 | 8/5/2003, 68 FR 46089. | |
| 3745–14–12 ..... | Stationary Internal Combustion Engines. | 5/7/2005 | 2/4/2008, 73 FR 6427. | |
| * | * | * | * | * |

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[FR Doc. 2019–19781 Filed 9–16–19; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 180117042–8884–02]**

**RIN 0648–XT016**

## Atlantic Highly Migratory Species; Atlantic Commercial Shark Fisheries

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS is transferring 5 metric tons (mt) dressed weight (dw) of blacktip quota, 50 mt dw of aggregated large coastal shark (LCS) quota, and 8 mt dw of hammerhead shark management group quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region for the remainder of the 2019 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason quota transfers and applies to commercial Atlantic shark permitted vessels.

**DATES:** Effective September 12, 2019, through December 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Guy DuBeck or Karyl Brewster-Geisz, 301–427–8503.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Based on dealer reports received as of August 30, 2019, NMFS estimates that in the eastern Gulf of Mexico sub-region, 7.1 mt dw (15,733 lb dw) or 26 percent of the blacktip sub-regional quota, 58.1 mt dw (128,025 lb dw) or 68 percent of the aggregated LCS sub-regional quota, and 9.1 mt dw (20,125 lb dw) or 68 percent of the hammerhead sub-regional quota has been landed. In the western Gulf of Mexico sub-region, 60.1 mt dw (132,396 lb dw) or 23 percent of the blacktip sub-regional quota, 11.8 mt dw (25,929 lb dw) or 16 percent of the aggregated LCS sub-regional quota, and <0.5 mt dw (<1,300 lb dw) or less than 5 percent of the hammerhead sub-regional quota has been landed. Regulations provide that NMFS will close the eastern Gulf of Mexico aggregated LCS and hammerhead shark management groups once landings reach, or are projected to reach, a threshold of 80 percent of the available aggregated LCS or hammerhead shark quota and are also projected to reach 100 percent before the end of the 2019 fishing year

(§ 635.28(b)(3)). Regulations also provide that NMFS will close the sub-regional eastern Gulf of Mexico blacktip management group before landings reach, or are expected to reach, 80 percent of the quota.

Under § 635.27(b)(2), NMFS may transfer quota between regions inseason for species or management groups where the species are the same between regions and the quota is split between regions for management purposes and not as a result of a stock assessment. Before making such adjustments, NMFS considers the following determination criteria from § 635.27(b)(2)(iii) and other relevant factors: (1) The usefulness of information obtained from catches in the particular management group for biological sampling and monitoring of the status of the respective shark species and/or management group; (2) the catches of the particular species and/or management group quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; (3) the projected ability of the vessels fishing under the particular species and/or management group quota to harvest the additional amount of corresponding quota before the end of the fishing year; (4) effects of the adjustment on the status of all shark species; (5) effects of the adjustment on accomplishing the objectives of the fishery management plan; (6) variations in seasonal distribution, abundance, or migration patterns of the appropriate shark species and/or management group; (7) effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the quota; and/or (8) review of dealer reports, daily landing trends, and the availability of the respective shark species and/or management group on the fishing grounds.

Given that western Gulf of Mexico blacktip, aggregated LCS, and hammerhead sub-regional landings are low relatively late in the year and that the eastern Gulf of Mexico aggregated LCS and hammerhead sub-regional quotas are nearing 80 percent (68 percent), NMFS has considered the inseason quota transfer criteria and determined that a transfer from the sub-regional western quotas to the eastern quotas is warranted to avoid potential closure of those fisheries while fishing opportunities still exist.

**Quota Transfer**

After fully considering all the criteria listed above, NMFS is taking action to transfer blacktip quota, aggregated LCS quota, and hammerhead shark management group quotas from the western Gulf of Mexico sub-regional quota to the eastern Gulf of Mexico sub-regional quota. Under § 635.27(b)(2)(iii), NMFS may transfer quotas between regions and sub-regions of the same species or management group, as appropriate, after considering the regulatory determination criteria, listed above. NMFS's consideration of the relevant criteria includes, but is not limited to, the following:

Regarding the first criterion, biological samples collected by NMFS scientific observers on commercial vessels targeting aggregated LCS and hammerhead sharks continue to provide NMFS with valuable data for ongoing scientific studies of shark age and growth, migration, and reproductive status. Regarding the second criterion, commercial shark dealer data show that landings of the eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead sharks are approaching 80 percent of the quota (68 percent). Once the landings reach, or are projected to reach a threshold of 80 percent of the quotas and are also projected to reach 100 percent before the end of the 2019 fishing year, the eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead shark management groups would close.

Considering the third, fourth, sixth, seventh, and eighth criteria, NMFS analyzed landings data, catch trends, and potential migration of the species involved and determined that under current fishing rates, 5 mt dw of blacktip, 50 mt dw of aggregated LCS, and 8 mt dw of hammerhead shark management groups are reasonable amounts of quota to transfer, which would allow fishermen the opportunity to fully utilize the available shark quota, while avoiding negative economic impacts by closing the shark management groups. This action will not have impacts beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments and thus is not expected to negatively impact the stock.

Regarding the fifth criterion, this action is consistent with the quotas previously implemented and analyzed in the 2019 shark quota final rule (83 FR 60777; November 27, 2018) and in the final rule implementing Amendment 5a to the 2006 Consolidated Atlantic HMS FMP. Specifically, this action is consistent with the objective of providing opportunities to fully harvest shark quotas without exceeding them.

Based on the considerations above, NMFS is transferring 5 mt dw of blacktip, 50 mt dw of aggregated LCS, and 8 mt dw of hammerhead shark management group quotas from the western Gulf of Mexico sub-regional quota to the eastern Gulf of Mexico sub-regional quota as of September 12, 2019. This quota transfer results in adjusted quotas of 32.7 mt dw for blacktip, 135.5 mt dw for aggregated LCS, and 21.4 mt dw for the hammerhead shark management group in the eastern Gulf of Mexico sub-region and 250.8 mt dw for blacktip, 22 mt dw for aggregated LCS, and 3.9 mt dw for the hammerhead shark management group in the western Gulf of Mexico sub-region. If landings and fishing rates do not increase substantially, transferring quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region could allow the blacktip, aggregated LCS, and hammerhead fisheries in each sub-region to remain open through the end of the 2019 fishing year.

Therefore, NMFS adjusts the eastern Gulf of Mexico blacktip, aggregated LCS, and hammerhead management group sub-regional quotas for the remainder of the 2019 shark fishing year, unless we announce another quota transfer or adjustment in the **Federal Register** or close the fishery.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N lat., proceeding due east. Any water and land to the south and west of that boundary is considered for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region. The boundary between the western and eastern Gulf of Mexico sub-regions is drawn along 88°00′ W long. (§ 635.27(b)(1)(ii)). Persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4 may still retain blacktip sharks, aggregated LCS, and/or hammerhead sharks management groups in the eastern Gulf of Mexico sub-region (east of 88°00′ W long.).

**Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice is impracticable because the regulatory criteria for inseason quota transfers are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and allowing fishermen to capitalize on underutilized quota. Adjustment of the blacktip, aggregated LCS, and hammerhead fisheries quota in

the eastern and western Gulf of Mexico sub-regions will become effective on September 12, 2019. Analysis of available data shows that transfer of the quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region would result in minimal risks of exceeding the blacktip shark, aggregated LCS, and hammerhead shark quotas in the Gulf of Mexico region. With quota available and with no measurable impacts to the stocks expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise allowable through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. The transfer of quota from the western Gulf of Mexico sub-region to the eastern Gulf of Mexico sub-region is effective September 12, 2019, to minimize any unnecessary disruption in fishing patterns and to allow the impacted fishermen to benefit from the adjustment. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This temporary rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 12, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019–20126 Filed 9–12–19; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 84, No. 180
Tuesday, September 17, 2019

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR parts 315, 432 and 752

**RIN 3206–AN60**

## Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations governing probation on initial appointment to a competitive position, performance-based reduction in grade and removal actions, and adverse actions. The proposed rule will effect a revision of OPM's regulations to make procedures relating to these subjects more efficient and effective. The proposed rule also amends the regulations to incorporate other statutory changes and technical revisions.

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

**ADDRESSES:** You may submit comments, identified by the docket number or Regulation Identifier Number (RIN) for this proposed rulemaking, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.

*Instructions:* All submissions must include the agency name and docket number or RIN for this rulemaking. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. All comments received will be posted without change, including any personal information provided. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked ''late,'' and OPM is not required to consider them in formulating a final decision. Before acting on this proposal, OPM will consider and respond to all comments within the scope of the regulations that we receive on or before the closing date for comments. Changes to this proposal may be made in light of the comments we receive.

**FOR FURTHER INFORMATION CONTACT:** Timothy Curry by email at *employeeaccountability@opm.gov* or by telephone at (202) 606–2930.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is proposing revisions to regulations governing probation on initial appointment to a competitive position; performance-based reduction in grade and removal actions; and adverse actions under statutory authority vested in it by Congress in 5 U.S.C. 3321, 4305, 4315, 7504, 7514 and 7543. The regulations will assist agencies in carrying out, consistent with law, certain of the President's directives to the Executive Branch in Executive Order 13839 that are not currently enjoined, and update current procedures to make them more efficient and effective. The proposed regulations also will update references and language due to statutory changes; and clarify procedures and requirements to support managers in addressing unacceptable performance and promoting employee accountability for performance-based reduction-in-grade, removal actions and adverse actions. The proposed regulations support agencies in implementing their plans to maximize employee performance as required by Office of Management and Budget (OMB) M–17–22 (April 12, 2017) and elements of the President's Management Agenda relating to the Workforce for the 21st Century.

OPM is aware of the judicially-imposed limitations on implementing other portions of Executive Order 13839. OPM has and will continue to comply fully with the injunction, and will not issue regulations implementing the invalidated parts of the Executive Order as long as the judicial injunction is in place. OPM will heed the court's reaffirmation that ''Congress has clearly vested OPM with the authority to 'execut[e], administer [ ], and enforc[e] the civil service rules and regulations of the President and the Office and the laws governing the civil service . . .'' and with the authority to 'aid [ ] the President, as the President may request, in preparing such civil service rules as the President prescribes.' '' OPM further relies upon the court's statement that, ''given the wellsprings of authority that OPM enjoys in this area, OPM can surely receive directions from the President to promulgate regulations that are consistent with the rights and duties that the FSLMRS or CSRA prescribe, and setting aside the invalidity of some of the underlying substantive mandates.'' *American Federation of Government Employees, AFL–CIO* v. *Trump,* 318 F. Supp. 3d 370, 438 (D.D.C. 2018). OPM is proposing these regulations under its congressionally-granted authority to regulate the Parts that it proposes to revise subject to the notice-and-comment process set forth in the Administrative Procedure Act, and mindful of the President's expressed policy direction.

### The Case for Action

''* * * I call on Congress to empower every Cabinet Secretary with the authority to reward good workers and to remove Federal employees who undermine the public trust or fail the American people.''

With that statement on January 29, 2018, President Trump set a new direction for promoting efficient and effective use of the Federal workforce—reinforcing Federal employees should be both rewarded and held accountable for performance and conduct. Merit system principles provide a framework for responsible behavior that is aligned with the broader responsibility Federal government employees agree to when they take the oath to preserve and defend the Constitution. In keeping with merit system principles, the President's Management Agenda (PMA) recognizes that Federal employees underpin nearly all the operations of the Government, ensuring the smooth functioning of our democracy. The Federal personnel system needs to keep pace with changing workplace needs and return to its root principles. Notably, as demonstrated in the Federal Employee Viewpoint Survey, a majority of both employees and managers agree that the performance management system fails to reward the best and address unacceptable performance. Finally, the PMA calls for agencies to establish

processes that help agencies retain top employees and efficiently remove those who fail to perform or to uphold the public's trust.

Prior to establishment of the PMA, the Office of Management and Budget (OMB) issued a memorandum to agencies on April 12, 2017 entitled ''M–17–22—Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce.'' M–17–22 called on agencies to take near-term actions to ensure that the workforce they hire and retain is as effective as possible. OMB called on agencies to determine whether aspects of their current policies and practices present barriers to hiring and retaining the workforce necessary to execute their missions as well as appropriately managing it and, if necessary, removing poor performers and employees who commit misconduct. Notably, M–17–22 directed agencies to ensure that managers have the tools and support they need to manage performance and conduct effectively to achieve high-quality results for the American people.

More recently, E.O. 13839 notes that merit system principles call for holding Federal employees accountable for performance and conduct. The merit system principles state that employees should maintain high standards of integrity, conduct, and concern for the public interest, and that the Federal workforce should be used efficiently and effectively. They further state that employees should be retained based on the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. E.O. 13839 further notes that implementation of America's civil service laws has fallen far short of these ideals. It acknowledged that the Federal Employee Viewpoint Survey has consistently found that less than one-third of Federal employees believe that the Government deals with poor performers effectively. E.O. 13839 finds that failure to address unacceptable performance and misconduct undermines morale, burdens good performers with subpar colleagues, and inhibits the ability of executive agencies to accomplish their missions.

E.O. 13839 requires executive agencies (as defined in section 105 of title 5, U.S. Code, excluding the Government Accountability Office) to facilitate a Federal supervisor's ability to promote civil servant accountability while simultaneously recognizing employee's procedural rights and protections. Agencies should recognize and reward good performers, while unacceptable performers should be separated if they do not improve their performance to meet the required standards. A probationary period is one effective tool to evaluate a candidate's potential to be an asset to an agency before the candidate's appointment becomes final. Therefore, probationary periods, as the final step in the hiring process of new employees, should be used to the greatest extent possible to assess how well they are performing the duties of their jobs; and instances of poor performance and misconduct should be dealt with promptly.

OPM is proposing changes to regulations to implement those requirements of E.O. 13839 not judicially enjoined as well as to implement the vision of the PMA and the objectives of M–17–22. These proposed changes not only support agency efforts in implementing E.O. 13839, the PMA, and M–17–22, but also will facilitate the ability of agencies to deliver on their mission and on providing service to American people. Ultimately, these changes support President Trump's goal of effective stewardship of taxpayers' money by our government.

**Data Collection of Adverse Actions**

Section 6 of E.O. 13839 outlines certain types of data for agencies to collect and report to OPM as of fiscal year 2018. To enhance public accountability of agencies, OPM will collect and, consistent with applicable law, publish the information received from agencies aggregated at a level necessary to protect personal privacy. OPM may withhold particular information if publication would unduly risk disclosing information protected by law, including personally identifiable information. Section 6 requires annual reporting of various categories of data, including: (1) The number of civilian employees in a probationary period or otherwise employed for a specific term who were removed by the agency; (2) the number of civilian employees reprimanded in writing by the agency; (3) the number of civilian employees afforded an opportunity period by the agency under section 4302(c)(6) of title 5, United States Code, breaking out the number of such employees receiving an opportunity period longer than 30 days; (4) the number of adverse actions taken against civilian employees by the agency, broken down by type of adverse action, including reduction in grade or pay (or equivalent), suspension, and removal; (5) the number of decisions on proposed removals by the agency taken under chapter 75 of title 5, United States Code, not issued within 15 business days of the end of the employee reply period; (6) the number of adverse actions by the agency for which employees received written notice in excess of the 30 days prescribed in section 7513(b)(1) of title 5, United States Code; (7) the number and key terms of settlements reached by the agency with civilian employees in cases arising out of adverse actions; and (8) the resolutions or outcomes of litigation about adverse actions involving civilian employees reached by the agency.

On July 5, 2018, OPM issued guidance for implementation of E.O. 13839. This guidance included instructions for each department or agency head to coordinate the collection of data from their components and compile one consolidated report for submission to OPM using the form attached to the guidance memo. Forms must be submitted electronically to OPM via email at *employeeaccountability@opm.gov* generally no later than 60 days following the conclusion of each fiscal year. In lieu of outlining the data collection requirements in OPM regulations, OPM will issue reminders of this requirement annually and provide periodic guidance consistent with the requirements of E.O. 13839.

**5 CFR PART 315, SUBPART H—PROBATION ON INITIAL APPOINTMENT TO A COMPETITIVE POSITION**

Section 2(i) of E.O. 13839 provides that a probationary period should be used as the final step in the hiring process of a new employee. The E.O. further notes that supervisors should use that period to assess how well an employee can perform the duties of a job. OPM guidance has stated previously that the probationary period is the last and crucial step in the examination process. The probationary period is intended to give the agency an opportunity to assess, on the job, an employee's overall fitness and qualifications for continued employment and permit the termination, without Chapter 75 procedures, of an employee whose performance or conduct does not meet acceptable standards to deliver on the mission. Thus it provides an opportunity for supervisors to address problems in an expeditious manner and avoid long-term problems inhibiting effective service to the American people. Employees may be terminated from employment during the probationary period for reasons including demonstrated inability to perform the duties of the position, lack

of cooperativeness, or other unacceptable conduct or poor performance. To achieve the objective of maximizing the effectiveness of this probationary period, OPM believes that timely notifications to supervisors regarding probationary periods can be a useful tool for agencies and should be used. OPM is proposing amendments to regulations at Subpart H of 5 CFR part 315 to require agencies to notify supervisors that an employee's probationary period is ending, at least three months or 90 days prior to expiration of the probationary period, and then again one month or 30 days prior to expiration of the probationary period, and advise a supervisor to make an affirmative decision regarding the employee's fitness for continued employment or otherwise take appropriate action. OPM believes this requirement will assist agencies in making more effective use of the probationary period. Agencies have discretion to determine the method for making this communication, but are encouraged to make use of existing automated tools to facilitate timely notifications.

**5 CFR part 432—Performance-Based Reduction in Grade and Removal Actions**

*Section 432.101 Statutory Authority*

Part 432 applies to reduction in grade and removal of covered employees based on performance at the unacceptable level. Congress enacted chapter 43, in part, to create a simple, dedicated, though not exclusive, process for agencies to use in taking adverse actions based on unacceptable performance. Since that time however, chapter 43 has not worked as well as Congress intended. In particular, interpretations of chapter 43 have made it difficult for agencies to take actions against unacceptable performers and to have those actions upheld.

*Section 432.104 Addressing Unacceptable Performance*

The proposed rule at § 432.104 clarifies that, other than those requirements listed, there is no specific requirement regarding the nature of any assistance provided during an opportunity period, and is not determinative of the ultimate outcome with respect to reduction in grade or pay, or a removal.

The proposed rule also states that no additional performance improvement period or similar informal period to demonstrate acceptable performance to meet the required performance standards shall be provided prior to or in addition to the opportunity period under this part. This change supports the stated principles of E.O. 13839 which provide that removing unacceptable performers should be a straightforward process furthering effective stewardship of taxpayer money. Establishing limits on the opportunity to demonstrate acceptable performance by precluding additional opportunity periods beyond what is required by law encourages efficient use of the procedures under chapter 43 and furthers effective delivery of agency mission while still providing employees sufficient opportunity to demonstrate acceptable performance as required by law.

The proposed rule is intended to clarify the requirements in chapter 43 of title 5 of the United States Code. The goal of these amendments, consistent with E.O. 13839, is to streamline civil service removal procedures related to unacceptable performance. Nothing in the proposed amendments to 5 CFR part 432 should be construed to relieve agencies of their continuing obligations under Federal law, *e.g.,* 5 U.S.C. 6384 and 29 U.S.C. 791(g). Finally, we note that 5 U.S.C. 2301(b)(2) provides that employees should receive fair and equitable treatment without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, and handicapping condition, and with proper regard for their privacy and rights. All personnel actions must meet this statutory requirement.

*Section 432.105 Proposing and Taking Action Based on Unacceptable Performance*

5 U.S.C. 4302(c)(5) provides for ''assisting employees in improving unacceptable performance;'' and 5 U.S.C. 4302(c)(6) provides for ''reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.'' The proposed rule de-links 5 U.S.C. 4302(c)(5) and (6) by clarifying in § 432.105 that the opportunity to demonstrate acceptable performance required prior to initiating an action pursuant to 5 U.S.C. 4303 may include any and all performance assistance measures taken during the performance appraisal period to assist employees pursuant to 5 U.S.C. 4302(c)(5), not just those taken during the formal opportunity period.

*Section 432.108 Settlement Agreements*

Section 5 of E.O. 13839 establishes a new requirement that an agency shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse action. Such agreements have traditionally been referred to as ''clean record'' agreements. This new requirement is intended to promote the high standards of integrity and accountability within the Federal workforce by requiring agencies to maintain personnel records that reflect complete information, and not to alter the information contained in those records in connection with a formal or informal complaint or adverse action. It is further intended to ensure that those records are preserved so that agencies can make appropriate and informed decisions regarding an employee's qualification, fitness, and suitability as applicable to future employment.

Section 5 requirements should not be construed to prevent agencies from correcting records of an action taken by the agency illegally or in error. In such cases, an agency has the authority—unilaterally or by agreement—to modify an employee's personnel file to remove inaccurate information or the record of an erroneous or illegal action. Specifically, the proposed rule states that the Section 5 requirements of E.O. 13839 should not be construed to prevent agencies from taking corrective action should it come to light, including during or after the issuance of an adverse personnel action, that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel file to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. An agency should report any agreements relating to removal of such information as part of its annual report to the OPM Director, as required by Section 6 of E.O. 13839. Documents subject to withdrawal or

modification could include, for example, an SF–50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action, or an employee performance appraisal. See discussion above concerning ''Data Collection of Adverse Actions.'' Section 5 requirements should also not be construed to prevent agencies from entering into partial clean record settlements with regard to information provided to non-Federal employers. Finally, to the extent that an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency files. The proposed rule states that when persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency files. However, the requirements described in Section 5 would continue to apply to any accurate information about the employee's performance or conduct which comes to light prior to issuance of a final agency decision on an adverse action. Based on the foregoing, the proposed rule at § 432.108 reflects E.O. 13839's restrictions on settlement agreements arising from chapter 43 actions.

**Technical Amendments**

The proposed rule corrects the spelling of the word ''incumbents'' within § 432.103(g) and the word ''extension'' at § 432.105(a)(4)(i)(B)(3). OPM proposes to replace the term ''handicapping condition'' with ''disability'' at § 432.105(a)(4)(i)(B)(4) to bring the definition into conformance with 29 U.S.C. 705. In this rule, OPM also revises § 432.105(a)(4)(i)(C) to correctly identify the office that an agency shall contact if it believes that an extension of the advance notice period is necessary for a reason other than those listed in § 432.105(a)(4)(i)(B). OPM proposes to revise § 432.106(b)(1) to replace ''i.g.'' with ''i.e.'' within the parenthetical concerning non-exclusion by the parties to a collective bargaining agreement. Finally, OPM corrects the use of the word ''affected'' versus ''effected'' within § 432.107(b).

**5 CFR Part 752—Adverse Actions**

**Subpart A—Discipline of Supervisors Based on Retaliation Against Whistleblowers**

5 U.S.C. 7515 provides agencies the ability to deal with retaliation by supervisors for whistleblowing. The regulations reinforce the responsibility of agencies to protect whistleblowers from retaliation. These requirements are significant because of the essential protections they provide. Prohibited personnel actions are not consistent with the notion of a system based on merit and failure to observe these prohibitions must be addressed promptly and resolutely.

Based on this need, OPM is proposing a new addition to the current adverse action system. We are revising our regulations to incorporate the changes created by the statute and ensure that agencies understand how to meet the additional requirements in connection with prohibited personnel actions. This new proposed rule falls under subpart A of 5 CFR part 752 as ''Discipline of supervisors based on retaliation against whistleblowers.'' The proposed language implements the statutory authority and procedures of 5 U.S.C. 7515 which require that certain actions be taken against a supervisor who retaliates against a whistleblower. These provisions reinforce the principle that increased accountability is warranted in situations where a supervisor commits a prohibited personnel action against an employee of an agency, in violation of paragraph (8), (9), or (14) of 5 U.S.C. 2302(b). The proposed rule subjects an action taken under subpart A to many of the same procedural requirements as an action taken under subparts B, D, and F of this chapter. For example, Subpart A incorporates the standard for action from each of the related subparts in this chapter. However, the proposed rule also includes some key exceptions. These proposed regulations help to undergird and support agencies in meeting their requirements to take action against any supervisor who retaliates against whistleblowers. The following section identifies the major additions proposed by this subpart and briefly describes the purpose of each addition.

*Section 752.101 Coverage*

The proposed rule describes the adverse actions covered and defines key terms used throughout the subchapter. The proposed rule includes a definition for the term ''business day.'' This addition is necessary to implement the 15 business day decision period described in E.O. 13839. The proposed rule also includes a definition for ''insufficient evidence.'' OPM defines this new term as evidence that fails to meet the substantial evidence standard described in 5 CFR 1201.4(p).

*Section 752.102 Standard for Action and Penalty Determination*

5 U.S.C. 7515 incorporates many of the procedural elements of 5 U.S.C. 7503, 7513 and 7543, to include the standards of action applied to each type of adverse action. For supervisors not covered under subchapter V of title 5, the proposed rule applies the efficiency of the service standard. For supervisors who are members of the Senior Executive Service, the proposed rule defines the standard of action as misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment, or to accompany a position in a transfer of function.

5 U.S.C. 7515 enhances statutory protection for whistleblowers through the creation of proposed mandatory penalties. Specifically, for the first incident of a prohibited personnel action, an agency is required to propose the penalty at a level no less than a 3-day suspension. Further, the agency may propose an additional action, including a reduction in grade or pay. For the second incident of a prohibited personnel action, an agency is required to propose that the supervisor be removed.

*Section 752.103 Procedures*

The proposed rule establishes the procedures to be utilized for actions taken under this subpart. The procedures in the subpart are the same as those described in 5 U.S.C. 7503, 7513 and 7543, with the exception of provisions concerning advance notice and the reply period. Agencies must implement the related procedures on taking action, which have a shortened time period and require agencies to issue a final decision on a proposed action against a supervisor after the end of the 14-day advance notice period. Under this subpart, supervisors against whom an action is proposed are entitled to no more than 14 days to answer after receipt of the proposal notice. At the conclusion of the 14-day reply period, the agency shall carry out the proposed action if the supervisor fails to provide evidence or provides evidence that the head of the agency deems insufficient. Notably, the proposed rule also includes the requirement that, if the head of an

agency is responsible for determining whether a supervisor has committed a prohibited personnel action, that responsibility may not be delegated.

Finally, the proposed rule at § 752.103 (d) includes language that, to the extent practicable, an agency should issue the decision on a proposed removal under this subpart within 15 business days of the conclusion of the employee's opportunity to respond.

*Section 752.104 Settlement Agreements*

The proposed language in this section establishes the same requirement that is detailed in the proposed rule changes at § 432.108, Settlement agreements. Please see discussion in § 432.108.

**Subpart B—Regulatory Requirements for Suspension for 14 Days or Less**

This subpart addresses the procedural requirements for suspensions of 14 days or less for covered employees.

*Section 752.201 Coverage*

Pursuant to the creation of subpart A within the proposed rule, § 752.201(c) reflects an exclusion for actions taken under 5 U.S.C. 7515.

*Section 752.202 Standard for Action and Penalty Determination*

While the standard for action under this subpart remains unchanged, the proposed rule makes clear that an agency is not required to use progressive discipline under this subpart. Further, OPM has decided to adopt formally by regulation in this section the standard applied by MSPB in *Douglas* v. *Veterans Administration,* 5 M.S.P.R. 280 (1981) to removals, suspensions and demotions, including suspensions of fewer than 15 days. Specifically, the proposed rule adopts the requirement to propose and impose a penalty that is within the bounds of tolerable reasonableness. This is a principle that is embedded deeply in Federal civil-service law. Arbitrators are required to defer to an agency decision, and may not mitigate a penalty unless it is beyond the bounds of tolerable reasonableness. We now make it clear that this standard applies not only to those actions taken under 5 U.S.C. 7513, but apply as well to those taken under 5 U.S.C. 7503. Any collective-bargaining proposal in conflict with this government-wide regulation will be contrary to law and non-negotiable. There is no legal principle in the Federal Government that requires agencies to impose the least penalty to rehabilitate an employee. A proposed penalty is in the sole and exclusive discretion of the proposing official, and the penalty decision is in the sole and exclusive discretion of the deciding official, subject to appellate or other review procedures prescribed in law and cannot be the subject of collective bargaining.

The penalty for an instance of misconduct should be tailored to the facts and circumstances of each case. Further, employees should be treated equitably. Nevertheless, conduct that justifies discipline of one employee at one time by a particular deciding official does not necessarily justify the same or similar disciplinary decision for a different employee at a different time. So agencies should consider appropriate comparators when evaluating a potential disciplinary action. The Court of Appeals for the Federal Circuit has held that an agency need only provide ''proof that the proffered comparator was in the same work unit, with the same supervisor, and was subjected to the same standards governing discipline.'' *Miskill* v. *Social Security Administration,* 863 F.3d 1379 (Fed. Cir. 2017). It should not tie the hands of a different deciding official at a different time or in a different context, or under different circumstances. We are proposing adoption of the *Miskill* test. This reinforces the key principle that each case stands on its own factual and contextual footing. Finally, among other relevant factors, an agency should consider an employee's disciplinary record and past work record, including all prior misconduct, when taking an action under this subpart. These guidelines reflect established principles, but stress management discretion to promote efficient Government while protecting the interests of all involved.

With respect to penalty determination, it is also noteworthy that some agencies develop and use tables of penalties to assist supervisors in identifying the level of discipline that may be appropriate to an individual case. The creation and use of a table of penalties is not required by statute, case law or OPM regulation, and OPM does not provide written guidance on this topic. The applicable standard, ''to promote the efficiency of the service,'' is broad and supple enough to encompass all occurrences that may occasion an adverse action. Thus, agencies have the ability to address misconduct appropriately without a table of penalties, and with sufficient flexibility to determine the appropriate penalty for each instance of misconduct. Tables of penalties may create significant drawbacks to the viability of a particular action and to effective management. Specifically, tables of penalties, by creating a range of penalties for an offense, limit the scope of management's discretion to tailor the penalty to the facts and circumstances of a particular case by excluding certain penalties along the continuum. Agencies that specify a range of penalties should expect that adjudicators may be, and have been, impervious to agency pleas that someone who holds a particular position may not be restored to the workplace. Although the law permits the agency to impose the maximum reasonable penalty, some adjudicators have responded that the existence of an agency promulgated range of penalties belies this claim. Although such adjudications are contrary to and undermine settled legal principles, they resist further administrative or judicial review of penalty decisions.

Further, OPM encourages managers to think carefully and coherently about when and how to impose discipline in a way that fosters an effective and efficient workplace, in the best interests of all employees and the agency's mission. By contrast, tables of penalties can foster a ''by-the-numbers'' approach in which managers may hide behind a chart imposed from above rather than take direct responsibility for their workplace.

A further risk of having an agency table of penalties is that a supervisor may apply it so inflexibly as to impair consideration of other factors relevant to an individual case. This type of rigid application of a table of penalties runs counter to the overall directive of *Douglas* to consider all of the criteria that may apply to an individual set of factual circumstances. A table of penalties does not, and should not, replace supervisory judgment. It is vital that supervisors use independent judgment, take appropriate steps in gathering facts, and conduct a thorough analysis to decide the appropriate penalty. However, once an agency establishes a table of penalties, it will be held accountable for striking a balance between ensuring that supervisors use their best judgment in applying the full spectrum of *Douglas* factors, with accountability for ensuring a level of consistency with the range of penalties described for a particular charge within the agency's table. For that reason, the proposed amendments to this section emphasize that an agency is not required to use progressive discipline and that the penalty for an instance of misconduct should be tailored to the facts and the circumstances, in lieu of the type of formulaic and rigid penalty determination that frequently results from agency publication of tables of penalties.

Finally, there is a significant body of decisional law concerning elucidating required manners of labelling and charging misconduct with attendant proof of an employee's state of mind. See for example, *Nazelrod* v. *Department of Justice,* 43 F.3d 663 (Fed. Cir. 1994). This type of common-law pleading is unusual in American law and is burdensome on agencies, spawning reams of costly training material and charging guides. It also slows the charging and decision making process. A table of penalties can exacerbate these problems further by implying that if an employee acts in a way that does not appear in a table of penalties' list of ''offenses,'' the behavior is beyond the agency's capacity to charge and penalize.

In short, there is no substitute for managers thinking independently and carefully about each incident as it arises, and, as appropriate, proposing or deciding the best penalty to fit the circumstances. Progressive discipline and table of penalties are inimical to good management principles. Finally, the proposed rule at § 752.202(f) adds language stating that a suspension should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require that an employee have previously been suspended or demoted before a proposing official may propose removal, except as may be appropriate under applicable facts.

*Section 752.203 Procedures*

Section 752.203(b) discusses the requirements for a proposal notice issued under this subpart. This section provides that the notice of proposed action must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The proposed rule includes language that the notice must also provide detailed information with respect to any right to appeal the action pursuant to Public Law 115–91 section 1097(b)(2)(A); specifically, the forum in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file. This additional language implements the requirement within Public Law 115–91 section 1097(b)(2)(A), which mandates that information on whistleblower appeal rights be included in any notice provided to an employee under 5 U.S.C. 7503(b)(1), 7513(b)(1), or 7543(b)(1).

Finally, the proposed language in § 752.203(h) establishes the same requirement that is detailed in the proposed rule changes at § 432.108, Settlement agreements. See discussion in § 432.108.

**Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less**

This subpart addresses the procedural requirements for removals, suspensions for more than 14 days, including indefinite suspensions, reductions in grade, reductions in pay, and furloughs of 30 days or less for covered employees.

*Section 752.401 Coverage*

Pursuant to the creation of subpart A within the proposed rule, § 752.401(b)(14) reflects an exclusion for actions taken under 5 U.S.C. 7515.

Section 752.401(c) identifies employees covered by this subpart. The proposed rule at § 752.401(c)(2) updates coverage to include an employee in the competitive service who is not serving a probationary or trial period under an initial appointment or, except as provided in section 1599e of title 10, United States Code, who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less. This language has been updated to align with 5 U.S.C. 7511(a)(1)(A)(ii).

*Section 752.402 Definitions*

The proposed rule includes a definition for the term ''business day.'' This addition is necessary to implement the 15 business day decision period described in E.O. 13839.

*Section 752.403 Standard for Action and Penalty Determination*

As with the rule changes proposed for § 752.202, the standard for action under this subpart remains unchanged and incorporates a penalty determination based on the principles of E.O. 13839. Please see discussion in § 752.202. In addition, the proposed rule at § 752.403 adds paragraph (f) which states that a suspension or a reduction in pay or grade should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require that an employee have previously been suspended or reduced in pay or grade before a proposing official may propose removal, except as may be appropriate under applicable facts.

*Section 752.404 Procedures*

Section 752.404(b) discusses the requirements for a notice of proposed action issued under this subpart. Specifically, § 752.404(b)(1) provides that, to the extent an agency, in its sole and exclusive discretion deems practicable, agencies should limit written notice of adverse actions taken under this subpart to the 30 days prescribed in 5 U.S.C. 7513(b)(1). Any notice period greater than 30 days must be reported to OPM. The proposed rule also includes the requirement that the notice must provide detailed information with respect to any right to appeal the action pursuant to Public Law 115–91 section 1097(b)(2)(A); specifically, the forum in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file. This additional language implements the requirement in Public Law 115–91 section 1097(b)(2)(A), which mandates that information on whistleblower appeal rights be included in any notice provided to an employee under 5 U.S.C. 7503(b)(1), 7513(b)(1), or 7543(b)(1).

The proposed rule at § 752.404(b)(3)(iv) also incorporates by reference the provisions of 5 U.S.C. 6329b, the Administrative Leave Act of 2016, related to placing an employee in a paid non-duty status during the advance notice period. Until OPM has published the final regulation for 5 U.S.C. 6329b, and after conclusion of the agency implementation period, in those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, an agency will continue to have as an alternative the ability to place an employee in a paid, nonduty status for such time to effect the action. Thereafter, an agency may use the provisions of 5 U.S.C. 6329b as applicable.

Finally, the proposed rule at § 752.404(g) discusses the requirements for an agency decision issued under this subpart. Specifically, the proposed rule at § 752.404(g)(3) includes new language that, to the extent practicable, an agency should issue the decision on a proposed removal under this subpart within 15 business days of the conclusion of the employee's opportunity to respond to reflect a key principle of E.O. 13839. These proposed changes facilitate timely resolution of adverse actions while preserving employee rights.

*Section 752.407 Settlement Agreements*

The proposed language in this section establishes the same requirement that is detailed in the proposed rule changes at § 432.108, Settlement Agreements. See discussion regarding § 432.108 above.

**Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service**

This subpart addresses the procedural requirements for suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

*Section 752.601 Coverage*

Pursuant to the creation of subpart A within the proposed rule, § 752.601(b)(2) reflects an exclusion for actions taken under 5 U.S.C. 7515.

*Section 752.602 Definitions*

The proposed rule includes a definition for the term ''business day.'' This addition is necessary to implement the 15 business day decision period described in E.O. 13839.

*Section 752.603 Standard for Action and Penalty Determination*

As with the rule changes proposed for §§ 752.202 and 752.403, the standard for action under this subpart remains unchanged and incorporates a penalty determination based on the principles of E.O. 13839. Please see discussion in § 752.202. In addition, the proposed rule at § 752.603 adds paragraph (f) which states that a suspension or a reduction in pay or grade should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require that an employee have previously been suspended or reduced in pay or grade before a proposing official may propose removal, except as may be appropriate under applicable facts.

*Section 752.604 Procedures*

Section 752.604(b) discusses the requirements for a notice of proposed action issued under this subpart. We have revised the language in this subpart to be consistent with the advance notice period for general schedule employees. Specifically, § 752.604(b)(1) provides that, to the extent an agency, in its sole and exclusive discretion deems practicable, agencies should limit written notice of adverse actions taken under this subpart to the 30 days prescribed in 5 U.S.C. 7543(b)(1). Any notice period greater than 30 days must be reported to OPM.

The proposed rule also includes additional language that the notice must provide detailed information with respect to any right to appeal the action pursuant to Public Law 115–91 section 1097(b)(2)(A); specifically, the forum in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file. This additional language implements the requirement within Public Law 115–91 section 1097(b)(2)(A), which mandates that information on whistleblower appeal rights be included in any notice provided to an employee under 5 U.S.C. 7503(b)(1), 7513(b)(1), or 7543(b)(1).

The proposed rule at § 752.604(b)(2)(iv) also incorporates by reference the provisions of 5 U.S.C. 6329b, The Administrative Leave Act of 2016, related to placing an employee in a paid non-duty status during the advance notice period. However, as noted above, until OPM has published the final regulation for 5 U.S.C. 6329b, and after conclusion of the agency implementation period, in those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, an agency will continue to have as an alternative the ability to place an employee in a paid, nonduty status for such time to effect the action. Thereafter, an agency may use the provisions of 5 U.S.C. 6329b as applicable.

Finally, the proposed rule at § 752.604(g) discusses the requirements for an agency decision issued under this subpart. Specifically, the proposed rule at § 752.604(g)(3) includes new language that, to the extent practicable, an agency should issue the decision on a proposed removal under this subpart within 15 business days of the conclusion of the employee's opportunity to respond to reflect one of the key principles of E.O. 13839.

*Section 752.607 Settlement Agreements*

The proposed language in this section establishes the same requirement that is detailed in the proposed rule changes at §§ 432.108, 752.203 and 752.407. Please see discussion regarding § 432.108 above.

**Regulatory Flexibility Act**

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

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

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' under Executive Order 12866.

**Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.

**E.O. 13132, Federalism**

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

**E.O. 12988, Civil Justice Reform**

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

**Unfunded Mandates Reform Act of 1995**

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

**Congressional Review Act**

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a 'rule' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory

Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

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

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

**List of Subjects in Title 5 CFR Parts 351, 430, 432 and 752**

*5 CFR Part 315*

Government employees.

*5 CFR Part 432*

Government employees.

*5 CFR Part 752*

Government employees.

Office of Personnel Management.

**Stephen Hickman,**

*Federal Register Liaison.*

Accordingly, for the reasons stated in the preamble, OPM proposes to amend 5 CFR parts 315, 432 and 752 as follows:

## PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 1. Revise the authority citation for part 315 to read as follows:

**Authority:** 5 U.S.C. 1302, 2301, 2302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; E.O. 13162, and E.O. 13839. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p.111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O.13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S. C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

### Subpart H—Probation on Initial Appointment to a Competitive Position

■ 2. Revise § 315.803(a) to read as follows:

**§ 315.803 Agency action during probationary period (general).**

* * * * *

(a) The agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his or her services during this period if the employee fails to demonstrate fully his or her qualifications for continued employment. The agency must notify its supervisors that an employee's probationary period is ending at least three months or 90 days prior to the expiration of an employee's probationary period, and then again one month or 30 days prior to the expiration of the probationary period, and advise a supervisor to make an affirmative decision regarding an employee's fitness for continued employment or otherwise take appropriate action.

* * * * *

## PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

■ 3. Revise the authority citation for part 432 to read as follows:

**Authority:** 5 U.S.C. 4303, 4305.

* * * * *

■ 4. Amend § 432.103 by revising paragraph (g) to read as follows:

* * * * *

(g) *Similar positions* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.

* * * * *

■ 5. Revise § 432.104 to read as follows:

**§ 432.104 Addressing unacceptable performance.**

At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. Other than the requirement described in 5 U.S.C. 4302(c)(5), there is no requirement regarding any assistance to be offered or provided by the agency during the opportunity period. The nature of such assistance is not determinative of a reduction in grade or pay, or a removal. No additional performance assistance period or similar informal period shall be provided prior to or in addition to the opportunity period provided under this section.

* * * * *

■ 6. Amend § 432.105 by revising paragraphs (a)(1), (a)(4)(i)(B)(3) through (4) and paragraph (a)(4)(i)(C) to read as follows:

**§ 432.105 Proposing and taking action based on unacceptable performance.**

(a)* * *

(1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to § 432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in one or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance. For the purposes of this section, the opportunity to demonstrate acceptable performance includes measures taken during the opportunity period as well as any other measures taken during the appraisal period for the purpose of assisting employees pursuant to 5 U.S.C. 4302(c)(5). Agencies may satisfy the requirement to provide assistance before or during the opportunity period.

* * * * *

(4)* * *

(i)* * *

(B)* * *

(*3*) To consider the employee's answer if an extension to the period for an answer has been granted (*e.g.,* because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a disability;

* * * * *

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Manager, Employee Accountability, Accountability and Workforce Relations, Employee Services, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

* * * * *

■ 7. Revise § 432.106(b)(1) to read as follows:

**§ 432.106 Appeal and grievance rights.**

* * * * *

(b) *Grievance rights.* (1) A bargaining unit employee covered under

§ 432.102(e) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (*i.e.,* is not excluded by the parties to the collective bargaining agreement) and the employee is:

* * * * *

■ 8. Revise § 432.107(b) to read as follows:

**§ 432.107 Agency records.**

* * * * *

(b) *When the action is not effected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for one year from the date of the advanced written notice provided in accordance with § 432.105(a)(4)(i), any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

* * * * *

■ 9. Add § 432.108 to read as follows:

**§ 432.108 Settlement agreements.**

(a) *Agreements to alter personnel records.* An agency shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse action.

(b) *Corrective action based on discovery of agency error.* The requirements described in paragraph (a) should not be construed to prevent agencies from taking corrective action should it come to light, including during or after the issuance of an adverse personnel action, that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel record(s) to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. And an agency should report any agreements relating to the removal of such information as part of its annual report to the OPM Director required by Section 6 of E.O. 13839. Documents subject to withdrawal or modification could include, for example, an SF–50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action, or an employee performance appraisal.

(c) *Corrective action based on discovery of material information prior to final agency action.* When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency records. The requirements described in paragraph (a) would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from Federal service.

## PART 752—ADVERSE ACTIONS

**Subpart A—Discipline of Supervisors Based on Retaliation Against Whistleblowers**

**Subpart B—Regulatory Requirements for Suspension for 14 Days or Less**

Sec.
752.201 Coverage.
752.202 Standard for action and penalty determination.
752.203 Procedures.

**Subpart C [Reserved]**

**Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less**

Sec.
752.401 Coverage.
752.402 Definitions.
752.403 Standard for action and penalty determination.
752.404 Procedures.
752.405 Appeal and grievance rights.
752.406 Agency records.
752.407 Settlement agreements.

**Subpart E [Reserved]**

**Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service**

Sec.
752.601 Coverage.
752.602 Definitions.
752.603 Standard for action and penalty determination.
752.604 Procedures.
752.605 Appeal rights.
752.606 Agency records.
752.607 Settlement agreements.

■ 10. Revise the authority citation for part 752 to read as follows:

**Authority:** 5 U.S.C. 7504, 7514, and 7543, Pub. L. 115–91.

* * * * *

■ 11. Add subpart A to part 752 to read as follows:

## Subpart A —Discipline of Supervisors Based on Retaliation Against Whistleblowers

Sec.
752.101 Coverage.
752.102 Standard for action and penalty determination.
752.103 Procedures.
752.104 Settlement agreements.

**§ 752.101 Coverage.**

(a) *Adverse actions covered.* This subpart applies to actions taken under 5 U.S.C. 7515.

(b) *Definitions.* In this subpart—

*Agency*—

(1) Has the meaning given the term in 5 U.S.C. 2302(a)(2)(C), without regard to whether any other provision of this chapter is applicable to the entity; and

(2) Does not include any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

*Business day* means any day other than a Saturday, Sunday, or legal public holiday under 5 U.S.C. 6103(a).

*Day* means a calendar day.

*Grade* means a level of classification under a position classification system.

*Insufficient evidence* means evidence that fails to meet the substantial evidence standard described in 5 CFR 1201.4(p).

*Pay* means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

*Prohibited personnel action* means taking or failing to take an action in violation of paragraph (8), (9), or (14) of 5 U.S.C. 2302(b) against an employee of an agency.

*Supervisor* means an employee who would be a supervisor, as defined in 5 U.S.C. 7103(a)(10), if the entity employing the employee was an agency.

*Suspension* means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

**§ 752.102 Standard for action and penalty determination.**

(a) Except for actions taken against supervisors covered under subchapter V of title 5, an agency may take an action under this subpart for such cause as will promote the efficiency of the service as described in 5 U.S.C. 7503(a) and 7513(a). For actions taken under this subpart against supervisors covered under subchapter V of title 5, an agency may take an action based on the standard described in 5 U.S.C. 7543(a).

(b) Subject to 5 U.S.C. 1214(f), if the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action, the head of the agency in which the supervisor is employed, consistent with the procedures required under this subpart—

(1) For the first prohibited personnel action committed by the supervisor—

(i) Shall propose suspending the supervisor for a period that is not less than 3 days; and

(ii) May propose an additional action determined appropriate by the head of the agency, including a reduction in grade or pay; and

(2) For the second prohibited personnel action committed by the supervisor, shall propose removing the supervisor.

**§ 752.103 Procedures.**

(a) *Non-delegation.* If the head of an agency is responsible for determining whether a supervisor has committed a prohibited personnel action for purposes of § 752.102(b), the head of the agency may not delegate that responsibility.

(b) *Scope.* An action carried out under this subpart—

(1) Except as provided in paragraph (b)(2) of this section, shall be subject to the same requirements and procedures, including those with respect to an appeal, as an action under 5 U.S.C. 7503, 7513, or 7543; and

(2) Shall not be subject to—

(i) Paragraphs (1) and (2) of 5 U.S.C. 7503(b);

(ii) Paragraphs (1) and (2) of subsection (b) and subsection (c) of 5 U.S.C. 7513; and

(iii) Paragraphs (1) and (2) of subsection (b) and subsection (c) of 5 U.S.C. 7543.

(c) *Notice.* A supervisor against whom an action is proposed to be taken under this subpart is entitled to written notice that—

(1) States the specific reasons for the proposed action;

(2) Informs the supervisor about the right of the supervisor to review the material that is relied on to support the reasons given in the notice for the proposed action;— and

(3) Provides notice of any right to appeal the action pursuant to section 1097(b)(2)(A) of Public Law 115–91, the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file.

(d) *Answer and evidence.* (1) A supervisor who receives notice under paragraph (c) of this section may, not later than 14 days after the date on which the supervisor receives the notice, submit an answer and furnish evidence in support of that answer.

(2) If, after the end of the 14-day period described in paragraph (d)(1) of this section, a supervisor does not furnish any evidence as described in that clause, or if the head of the agency in which the supervisor is employed determines that the evidence furnished by the supervisor is insufficient, the head of the agency shall carry out the action proposed under § 752.102(b), as applicable.

(3) To the extent practicable, an agency should issue the decision on a proposed removal under this subpart within 15 business days of the conclusion of the employee's opportunity to respond under paragraph (d)(1) of this section.

**§ 752.104 Settlement agreements.**

(a) *Agreements to alter official personnel records.* An agency shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse action.

(b) *Corrective action based on discovery of agency error.* The requirements described in paragraph (a) should not be construed to prevent agencies from taking corrective action should it come to light, including during or after the issuance of an adverse personnel action, that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel record(s) to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. And an agency should report any agreements relating to the removal of such information as part of its annual report to the OPM Director required by Section 6 of E.O. 13839. Documents subject to withdrawal or modification could include, for example, an SF–50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action, or an employee performance appraisal.

(c) *Corrective action based on discovery of material information prior to final agency action.* When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency records. The requirements described in paragraph (a) would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from Federal service.

■ 12. In § 752.201, revise paragraphs (c)(4) and (5) and add paragraph (c)(6) to read as follows:

**§ 752.201 Coverage.**

* * * * *

(c) * * *

(4) Of a re-employed annuitant;
(5) Of a National Guard Technician; or
(6) Taken under 5 U.S.C. 7515.

* * * * *

■ 13. In § 752.202, revise the section heading and add paragraphs © through (f) to read as follows:

**§ 752.202 Standard for action and penalty determination.**

* * * * *

(c) An agency is not required to use progressive discipline under this subpart. The penalty for an instance of misconduct should be tailored to the facts and circumstances. In making a determination regarding the appropriate penalty for an instance of misconduct, an agency shall adhere to the standard of proposing and imposing a penalty that is within the bounds of tolerable reasonableness. Within the agency, a proposed penalty is in the sole and exclusive discretion of a proposing official, and a penalty decision is in the sole and exclusive discretion of the deciding official. Penalty decisions are subject to appellate or other review procedures prescribed in law.

(d) Employees should be treated equitably. Conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time. An agency should consider appropriate comparators as the agency evaluates a potential disciplinary action. Appropriate comparators are individuals in the same work unit, with the same supervisor who were subjected to the same standards governing discipline.

(e) Among other relevant factors, agencies should consider an employee's disciplinary record and past work record, including all prior misconduct, when taking an action under this subpart.

(f) A suspension should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require that an employee have previously been suspended or demoted before a proposing official may propose removal, except as may be appropriate under applicable facts.

* * * * *

■ 14. Amend § 752.203 by revising paragraph (b) and by adding paragraph (h) to read as follows:

**§ 752.203 Procedures.**

* * * * *

(b) *Notice of proposed action.* The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The notice must further include detailed information with respect to any right to appeal the action pursuant to section 1097(b)(2)(A) of Public Law 115–91, the forum in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file.

* * * * *

(h) *Settlement agreements.* (1) An agency shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse action.

(2) The requirements described in paragraph (1) should not be construed to prevent agencies from taking corrective action should it come to light, including during or after the issuance of an adverse personnel action that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel record(s) to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. And an agency should report any agreements relating to the removal of such information as part of its annual report to the OPM Director required by Section 6 of E.O. 13839. Documents subject to withdrawal or modification could include, for example, an SF–50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action, or an employee performance appraisal.

(3) Corrective action based on discovery of material information prior to final agency action. When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency records. The requirements described in paragraph (h)(1) of this section would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from Federal service.

■ 15. In § 752.401, revise paragraphs (b)(14) and (15), add paragraphs (b)(16) and revise paragraph (c)(2) to read as follows:

**§ 752.401 Coverage.**

* * * * *

(b) * * *

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment;

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation, including a reduction necessary to comply with the amendments made by Public Law 108–411, regarding pay-setting under the General Schedule and Federal Wage System and regulations implementing those amendments; or

(16) An action taken under 5 U.S.C. 7515.

(c) * * *

(2) An employee in the competitive service—

(i) Who is not serving a probationary or trial period under an initial appointment; or

(ii) Except as provided in section 1599e of title 10, United States Code, who has completed one year of current continuous service under other than a temporary appointment limited to one year or less;

* * * * *

■ 16. In § 752.402, add the definition for ''Business day'' in alphabetical order to read as follows:

**§ 752.402 Definitions.**

* * * * *

*Business day* means any day other than a Saturday, Sunday, or legal public holiday under 5 U.S.C. 6103(a).

* * * * *

■ 17. In § 752.403, revise the section heading and add paragraphs (c) through (f) to read as follows:

**§ 752.403 Standard for action and penalty determination.**

* * * * *

(c) An agency is not required to use progressive discipline under this subpart. The penalty for an instance of misconduct should be tailored to the facts and circumstances. In making a determination regarding the appropriate penalty for an instance of misconduct, an agency shall adhere to the standard of proposing and imposing a penalty that is within the bounds of tolerable reasonableness. Within the agency, a proposed penalty is in the sole and exclusive discretion of a proposing official, and a penalty decision is in the sole and exclusive discretion of the deciding official. Penalty decisions are subject to appellate or other review procedures prescribed in law.

(d) Employees should be treated equitably in that conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time. An agency should consider appropriate comparators as the agency evaluates a potential disciplinary action. Appropriate comparators are individuals in the same work unit, with the same supervisor who were subjected to the same standards governing discipline.

(e) Among other relevant factors, agencies should consider an employee's disciplinary record and past work record, including all prior misconduct, when taking an action under this subpart.

(f) A suspension or a reduction in grade or pay should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require that an employee have previously been suspended or reduced in pay or grade before a proposing official may propose removal, except as may be appropriate under applicable facts.

■ 18. Amend § 752.404 by revising paragraphs (b)(1) and (b)(3)(iv), and adding paragraph (g)(3) to read as follows:

**§ 752.404 Procedures.**

* * * * *

(b) * * *

(1) An employee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. However, to the extent an agency in its sole and exclusive discretion deems practicable, agencies should limit a written notice of an adverse action to the 30 days prescribed in section 7513(b)(1) of title 5, United States Code. Advance notices of greater than 30 days must be reported to the Office of Personnel Management. The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The notice must further include detailed information with respect to any right to appeal the action pursuant to section 1097(b)(2)(A) of Public Law 115–91, the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file.

* * * * *

(3) * * *

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action. After publication of regulations for 5 U.S.C. 6329b, and the subsequent agency implementation period in accordance with 5 U.S.C. 6329b, an agency may place the employee in a notice leave status when applicable.

* * * * *

(g) * * *

(3) To the extent practicable, an agency should issue the decision on a proposed removal under this subpart within 15 business days of the conclusion of the employee's opportunity to respond under paragraph (c) of this section.

* * * * *

■ 19. Add § 752.407 to to read as follows:

**§ 752.407 Settlement agreements.**

(a) *Agreements to alter official personnel records.* An agency shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse action.

(b) *Corrective action based on discovery of agency error.* The requirements described in paragraph (a) of this section should not be construed to prevent agencies from taking corrective action, should it come to light, including during or after the issuance of an adverse personnel action that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel record(s) to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. And an agency should report any agreements relating to the removal of such information as part of its annual report to the OPM Director required by Section 6 of E.O. 13839. Documents subject to withdrawal or modification could include, for example, an SF–50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action, or an employee performance appraisal.

(c) *Corrective action based on discovery of material information prior to final agency action.* When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency records. The requirements described in paragraph (a) would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from Federal service.

■ 20. Revise § 752.601(b)(2) to read as follows:

**§ 752.601 Coverage.**

* * * * *

(b) * * *

(2) This subpart does not apply to actions taken under 5 U.S.C. 1215, 3592, 3595, 7532, or 7515.

* * * * *

■ 21. Amend § 752.602 by adding a definition for ''Business day'' in alphabetical order to read as follows:

**§ 752.602 Definitions.**

* * * * *

*Business day* means any day other than a Saturday, Sunday, or legal public holiday under 5 U.S.C. 6103(a).

* * * * *

■ 22. In § 752.603, revise the section heading and add paragraphs (c) through (f) to read as follows:

**§ 752.603 Standard for action and penalty determination.**

* * * * *

(c) An agency is not required to use progressive discipline under this subpart. The penalty for an instance of misconduct should be tailored to the facts and circumstances. In making a determination regarding the appropriate penalty for an instance of misconduct, an agency shall adhere to the standard of proposing and imposing a penalty that is within the bounds of tolerable reasonableness.

(d) Employees should be treated equitably in that conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time. An agency should consider appropriate comparators as the agency evaluates a potential disciplinary action. Appropriate comparators are individuals in the same work unit, with the same supervisor who were subjected to the same standards governing discipline.

(e) Among other relevant factors, agencies should consider an employee's disciplinary record and past work record, including all prior misconduct, when taking an action under this subpart.

(f) A suspension or reduction in grade or pay should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require that an employee have previously been suspended or reduced in pay or grade before a proposing official may propose removal, except as may be appropriate under applicable facts.

* * * * *

■ 23. Amend § 752.604 by revising paragraphs (b)(1) and (b)(2)(iv), and adding paragraph (g)(3) to read as follows:

**§ 752.604 Procedures.**

* * * * *

(b) * * *

(1) An appointee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. However, to the extent an agency in its sole and exclusive discretion deems practicable, agencies should limit a written notice of an adverse action to the 30 days prescribed in section 7543(b)(1) of title 5, United States Code. Advance notices of greater than 30 days must be reported to the Office of Personnel Management. The notice must state the specific reason(s) for the proposed action, and inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice. The notice must further include detailed information with respect to any right to appeal the action pursuant to section 1097(b)(2)(A) of Public Law 115–91, the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file.

(2) * * *

(iv) Placing the appointee in a paid, no duty status for such time as is necessary to effect the action. After publication of regulations for 5 U.S.C. 6329b, and the subsequent agency implementation period in accordance with 5 U.S.C. 6329b, an agency may place the employee in a notice leave status when applicable.

* * * * *

(g) * * *

(3) To the extent practicable, an agency should issue the decision on a proposed removal under this subpart within 15 business days of the conclusion of the employee's opportunity to respond under paragraph (c) of this section.

* * * * *

■ 24. Add § 752.607 to read as follows:

**§ 752.607 Settlement agreements.**

(a) *Agreements to alter official personnel records.* An agency shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse action.

(b) *Corrective action based on discovery of agency error.* The requirements described in paragraph (a) of this section should not be construed to prevent agencies from taking corrective action, should it come to light, including during or after the issuance of an adverse personnel action that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel record(s) to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. And an agency should report any agreements relating to the removal of such information as part of its annual report to the OPM Director required by Section 6 of E.O. 13839. Documents subject to withdrawal or modification could include, for example, an SF–50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action, or an employee performance appraisal.

(c) *Corrective action based on discovery of material information prior to final agency action.* When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency records. The requirements described in paragraph (a) would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from Federal service.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

**RIN 3245–AG95**

## Export Express, Export Working Capital, and International Trade Loan Programs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) is seeking comments on potential changes to the regulations governing its Export Loan Programs (the Export Express, Export Working Capital, and International Trade Loan Programs). SBA is soliciting comments on how the Agency can improve the products, procedures, forms, and reporting requirements of the Export Loan Programs. Feedback will be used to modernize the Export Loan Programs, increase lender participation and usage, ensure that U.S. small businesses can finance their international sales, and increase U.S. small business exports.

**DATES:** Comments must be received on or before November 18, 2019.

**ADDRESSES:** You may submit comments, identified by RIN 3245–AG95 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* David Vidal, Director, Office of International Trade, U.S. Small Business Administration, 409 Third Street SW, 2nd Floor, Washington, DC 20416.

All comments will be posted on *https://www.regulations.gov.* If you wish to submit Confidential Business Information (CBI) as defined in the User Notice at *https://www.regulations.gov,* you must submit such information either by mail to David Vidal, Director, Office of International Trade, U.S. Small Business Administration, 409 Third Street SW, 2nd Floor, Washington, DC 20416, or by email to *David.Vidal@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

**FOR FURTHER INFORMATION CONTACT:** David Vidal, Director, Office of International Trade, U.S. Small Business Administration, 409 Third Street SW, 2nd Floor, Washington, DC 20416; (202) 205–7119 or *David.Vidal@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The SBA 7(a) Loan Program includes three financing options for U.S. small business exporters, or businesses adversely affected by import competition: The Export Express Program, the Export Working Capital Program, and the International Trade Loan Program. The purpose of these programs is to provide access to capital for U.S. small business concerns to support expansion into international markets and the growth of U.S. small business exports. Details on the features and requirements of each program are described below.

*A. Export Express Program*

Established as a pilot program in 1998, the Export Express Program (Export Express) was made permanent by the Small Business Jobs Act of 2010 (Pub. L. 111–240). The statutory provisions for Export Express are in Section 7(a)(34) of the Small Business Act, as amended (15 U.S.C. 636(a)(34)). SBA's Standard Operating Procedures 50 10 5(K), Lender and Development Company Loan Programs, and 50 57 2, 7(a) Loan Servicing and Liquidation (SOPs), as amended, describe in detail the policies and procedures governing Export Express. On September 28, 2018, SBA published a Proposed Rule regarding, in part, Export Express (83 FR 49001). The original comment period for the Proposed Rule was scheduled to end on November 27, 2018 but was extended to December 18, 2018 (83 FR 57693). A Final Rule is under development.

The maximum loan amount for an Export Express loan is $500,000. The maximum SBA guaranty on an Export Express loan of $350,000 or less is 90 percent, and for an Export Express loan over $350,000 and up to $500,000, the maximum guaranty is 75 percent. Under Export Express, designated lenders (Export Express Lenders) are permitted to use, to the maximum extent practicable, their own analyses, procedures, and documentation in making, closing, servicing, and liquidating Export Express loans. They also have reduced requirements for submitting documentation to SBA and obtaining the SBA's prior approval. These loan analyses, procedures, and documentation must meet prudent lending standards; be consistent with those the Export Express Lender uses for its similarly sized, non-SBA guaranteed commercial loans; and conform to all requirements imposed upon 7(a) Lenders generally and Export Express Lenders in particular by Loan Program Requirements (as defined in 13 CFR 120.10), as such requirements are issued and revised by SBA from time to time. As with all 7(a) loans, the Export Express Lender must demonstrate that credit is not available elsewhere to the applicant on reasonable terms from non-federal, non-state, or non-local government sources, including the lender. In addition to the eligibility criteria applicable to all 7(a) loans, an Export Express borrower must have been in operation, although not necessarily in exporting, for at least 12 full months, unless certain additional requirements are met.

Export Express loan proceeds must be used for an export development activity, which includes the following:

a. Obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

b. Participating in a trade show that takes place outside of the U.S.;

c. Translation of product brochures or catalogues for use in markets outside of the United States;

d. Obtaining a general line of credit for export purposes;

e. Performing a service contract for buyers located outside the U.S.;

f. Obtaining transaction-specific financing associated with completing export orders;

g. Purchasing real estate or equipment to be used in the production of goods or services for export;

h. Providing term loans or other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the U.S.; and

i. Acquiring, constructing, renovating, modernizing, improving, or expanding a production facility or equipment to be used in the U.S. in the production of goods or services for export.

Export Express Lenders must follow the same collateral policies and procedures that they have established and implemented for their similarly sized, non-SBA guaranteed commercial loans, including those concerning identification of collateral. Such policies and procedures must be commercially reasonable and prudent. Additionally, Export Express lines of credit over $25,000 used to support the issuance of a standby letter of credit must have collateral (cash, cash equivalent or project) that will provide coverage for at least 25 percent of the issued standby letter of credit amount.

*B. Export Working Capital Program*

The statutory provisions for the Export Working Capital Program (EWCP) are in Sections 7(a)(14) and

7(a)(2)(D) of the Small Business Act, as amended (15 U.S.C. 636(a)(14) and 636(a)(2)(D)). Agency regulations at 13 CFR 120.340 to 13 CFR 120.344 govern EWCP. SBA's SOPs 50 10 5(K) and 50 57 2, as amended, describe in detail the policies and procedures governing EWCP. Under EWCP, SBA guarantees short-term export working capital loans made by participating lenders to eligible U.S. small business exporters. The maximum loan amount for an EWCP loan is $5,000,000. The guaranty for EWCP loans is 90 percent, not to exceed $4,500,000.

EWCP loan maturities may be for up to 3 years with annual renewals. EWCP loan facilities can be structured for single export transactions, multiple export transactions or as asset-based lines of credit. EWCP loan proceeds can be used only to finance export transactions. An export transaction is the production and payment associated with a sale of goods or services to a foreign buyer. In addition to the eligibility criteria applicable to all 7(a) loans, an EWCP borrower must be in business for one full year at the time of application, but not necessarily in the exporting business, unless waived by SBA. Additionally, as with all 7(a) loans, the EWCP lender must demonstrate that credit is not available elsewhere on reasonable terms to the borrower.

Eligible uses of EWCP loan proceeds are as follows:

a. To acquire inventory;

b. To pay the manufacturing costs of goods for export;

c. To purchase goods or services for export;

d. To support standby letters of credit;

e. For pre-shipment working capital; and

f. For post-shipment foreign accounts receivable financing.

SBA requires a first security interest sufficient to cover 100 percent of the EWCP loan amount (such as insured accounts receivable or letters of credit). Collateral must be located in the U.S., its territories or possessions. EWCP applicants are required to submit cash flow projections to support the need for the loan and demonstrate the ability to repay. After the EWCP loan is made, the EWCP borrower must submit continual progress reports.

*C. International Trade Loan Program*

The statutory provisions for the International Trade Loan Program (ITL) are in Section 7(a)(16) and 7(a)(2)(E) of the Small Business Act, as amended (15 U.S.C. 636(a)(16) and 636(a)(2)(E)). Agency regulations at 13 CFR 120.345 to 120.349 govern the ITL program. SBA's SOPs 50 10 5(K) and 50 57 2, as amended, describe in detail the policies and procedures governing the ITL program. Under the ITL program, SBA guarantees term loans made by participating lenders to U.S. small businesses that are engaged in or preparing to engage in international trade or are adversely affected by import competition. The maximum loan amount for an ITL loan is $5,000,000. The ITL loans may receive a maximum guaranty of 90 percent or $4,500,000, except that the maximum guaranty amount for any working capital component of an ITL loan is limited to $4,000,000.

An applicant must demonstrate that the ITL loan proceeds will allow it to significantly expand an existing export market or develop new export markets, or that the applicant has been adversely affected by import competition and the loan will improve its competitive position. As with all 7(a) loans, the ITL lender must demonstrate that credit is not available elsewhere on reasonable terms to the borrower.

Eligible uses of ITL loan proceeds are as follows:

a. Acquire, construct, renovate, modernize, improve, or expand facilities and equipment to be used in the U.S. to produce goods or services involved in international trade, and to develop and penetrate foreign markets;

b. Refinance existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under 7(a) Loan Program Requirements; and

c. Provide working capital.

Each ITL loan must be secured either by a first lien position or first mortgage on the property or equipment financed by the ITL loan or on other assets of the borrower. An ITL loan may be secured by a second lien position on the property or equipment financed by the ITL loan or on other assets of the borrower, if SBA determines the second lien position provides adequate assurance of the payment of the ITL loan.

## II. Comments Requested

This Advance Notice of Proposed Rulemaking (ANPRM) reflects a revision to the title submitted for this action in SBA's Spring 2019 Semiannual Regulatory Agenda. In order to facilitate feedback from the public, the rule title for this action is revised from ''Amendments to International Trade Loan Programs (RIN 3245–AG95)'' to ''Export Express, Export Working Capital, and International Trade Loan Programs (RIN 3245–AG95)''. SBA will include this revised rule title in its Fall 2019 Semiannual Regulatory Agenda and Regulatory Plan.

SBA requests comments from the public on the questions listed below. The list of questions is meant to assist in the formulation of public comments and is not intended to restrict the issues that may be addressed. Responders are invited to comment on any or all portions of this ANPRM.

*A. Questions About the Export Express Program*

1. Currently, the maximum loan amount for Export Express is $500,000, and loans up to $350,000 receive a 90 percent guaranty, while loans over $350,000 receive a 75 percent guaranty. Is there a need for an SBA guaranty for U.S. small business exporters at this loan level to address a market gap? Are the current maximum loan amount and guaranty amounts affecting usage of the program?

2. What requirements, including underwriting and types of documentation, do lenders use for export loans made under their conventional policies to ensure that loan proceeds are used for their intended purpose?

3. The Export Express program allows participating lenders to monitor lines of credit using their own internal policies for similarly sized non-SBA guaranteed commercial loans, provided that such policies are commercially reasonable and prudent. How do SBA requirements differ from lenders policies for conventional export loans regarding use of proceeds for unauthorized purposes?

4. Although the SBA Express and Export Express programs share many similarities, they are separate programs with separate maximum loan and guaranty amounts and different eligible uses of proceeds. Do lenders combine loans for both export and domestic uses for conventional commercial loans? If so, how does the monitoring, reporting and underwriting account for the different uses of proceeds?

5. The Export Express program allows participating lenders to refinance an existing Export Express loan under Export Express only if the original Export Express Lender is unable or unwilling to increase or make a second Export Express loan. Since all Export Express loans must have a stated maturity, do lenders support permitting the use of a term Export Express loan to refinance an Export Express revolving line of credit under other conditions?

6. Would the ability to submit Export Express loans using SBA One increase usage of the program? Do lending partners encounter any challenges in

inputting Export Express loans into SBA's E-Tran system?

7. How can SBA revise the Export Express Loan Program Requirements to increase the number of lenders using the Export Express program and increase the number of eligible U.S. small businesses receiving loans under the program?

8. How can SBA revise the Export Express Loan Program Requirements to more closely align with how lenders finance export transactions conventionally?

*B. Questions About the Export Working Capital Program*

1. Although EWCP provides guarantees for short-term loans with maturities of up to 3 years, EWCP loans with a maturity of 12 months or less are charged a guaranty fee of one quarter of one (.25) percent, while EWCP loans with a maturity over 12 months and up to 3 years are charged a guaranty fee of between 2 percent and 3 and 3 quarters (3.75) percent depending on the amount of the loan. What fee structure do lenders use for similarly sized working capital loans, including asset-based loans? Would an alternative fee structure increase participation in EWCP?

2. Currently, the maximum loan amount for EWCP is $5,000,000, and all loans receive a 90 percent guaranty. Per 7(a) loan program parameters, these loan guarantees must only be provided to eligible small businesses. Are these loan limits and credit facility types sufficient to serve the needs of U.S. small business exporters, particularly in light of the availability of a similar program with higher loan amounts at the Export-Import Bank of the United States (EXIM) which are not restricted to eligible small business?

3. Which, if any existing EWCP collateral requirements set forth in 13 CFR 120.343 differ from conventional lending standards for similarly sized commercial loans for collateral on asset-based lending export credit facilities?

4. Should SBA consider allowing lenders to advance loan proceeds under an EWCP line with sufficient collateral to ensure there is a 1:1 collateral ratio or better, rather than using a Borrowing Base Certificate, as is currently available in the 7(a) Working Capital CAPLine program? Would such a change increase usage of EWCP?

5. SBA understands that lenders and EXIM allow overseas accounts receivable and inventory owned by an affiliated entity of a borrower, located in overseas markets, to be included in a borrowing base on conventional export loans. What additional risks are associated with such a policy and what experience do lenders have recovering funds from the liquidation of such collateral for their non-SBA guaranteed loans of similar size?

6. What cash flow analysis (including projections) and documentation do lenders require on their conventional asset-based export loans similarly sized to SBA guaranteed loans?

7. What fees do lenders currently charge on conventional export loans similar in size to SBA guaranteed loans? What interest rates do lenders currently charge on conventional export loans similar in size to SBA guaranteed loans?

8. Non-bank lenders are allowed to participate in the EWCP program provided they are Small Business Lending Companies (SBLCs) or Non-Federally Regulated Lenders (NFRLs). Historically, Non-bank lender participation in the EWCP has been low. What outreach efforts and EWCP program changes would increase Non-bank lender utilization?

9. Would the inclusion of SBA One for electronic submission of EWCP loan applications increase usage of the program?

10. How can SBA revise the EWCP Loan Program Requirements to increase the number of lenders using the EWCP program and increase the number of eligible U.S. small businesses receiving loans under the program?

11. How can SBA revise the EWCP Loan Program Requirements to more closely align with how lenders finance export transactions conventionally?

*C. Questions About the International Trade Loan Program*

1. Currently, an ITL loan must be secured by a first lien position on the property or equipment financed by the loan or on other assets of the borrower, except that an ITL loan may be secured by a second lien position on the property or equipment or other assets of the borrower if SBA determines that the second lien position provides adequate assurance of payment of the ITL loan. Do the existing ITL collateral requirements align with commercial lending standards for collateralization of term facilities for capital assets? What other options for collateral are used in the extension of conventional commercial export loans of similar size?

2. ITL applicants must have a business plan reasonably supporting their projected export sales. Is there a need for additional policy guidance regarding this requirement?

3. Although ITL loans can be processed under a lender's delegated authority, is there a need for a streamlined delivery method for ITL loans with a maximum limit of $350,000 or less? Would such a delivery method increase lender usage of the ITL loan program?

4. Would the inclusion of the ITL programs in SBA One increase usage of the program? Do lending partners encounter any challenges in inputting ITL loans into SBA's E-Tran system?

5. How can SBA revise the ITL Loan Program Requirements to increase the number of lenders using the ITL program and increase the number of eligible U.S. small businesses receiving loans under the program?

6. How can SBA revise the ITL Loan Program Requirements to more closely align with how lenders finance export transactions conventionally?

*D. Export Financing General Comments*

SBA is seeking comments and recommendations on additional 7(a) Loan Program changes in order to increase the number of U.S. small business exporters and the volume of U.S. small business exports. Comments and recommendations are not limited to specific financial products. SBA would be interested in hearing from commenters on the need for loan guarantees for financial products specifically tailored for standby letters of credit, lease financing, purchase order financing, receivable factoring platforms, or supply chain finance.

Interested parties are invited to provide any other comments that they may have relating to the concerns described in this ANPRM. We ask that you provide a brief justification for any suggested changes.

**Christopher Pilkerton,**

*Acting Administrator.*

[FR Doc. 2019–20048 Filed 9–16–19; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 101 and 130

**[Docket No. FDA–2019–N–0463]**

**RIN 0910–A102**

## Addition of a New Method for the Analysis of Sulfites in Foods

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is proposing to amend the requirements

that specify the analytical method FDA uses to determine the concentration of sulfites in food. This action, if finalized, would, among other things, provide a new analytical method that can be used as an alternative to the existing analytical method and should improve the efficiency of FDA testing for sulfites in food.

**DATES:** Submit either electronic or written comments on the proposed rule by October 17, 2019.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 17, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 17, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions.'')

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–N–0463 for ''Amendment to Add a New Method for the Analysis of Sulfites in Foods.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Katherine S. Carlos, Center for Food Safety and Applied Nutrition (HFS–706), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1835, *Katherine.Carlos@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. Executive Summary

### *A. Purpose of the Proposed Rule*

FDA is issuing this proposed rule primarily to provide an alternative to the current analytical method that is incorporated by reference and establish a new, more efficient analytical method that FDA could use for determining sulfite concentrations in foods. This action is part of FDA's implementation of Executive Orders 13771 and 13777. Under these Executive Orders, FDA is comprehensively reviewing existing regulations to identify opportunities for repeal, replacement, or modification that will result in meaningful burden reduction while allowing us to achieve our public health mission and fulfill statutory obligations.

### *B. Summary of the Major Provisions of the Proposed Rule*

This proposed rule, if finalized, would update the current incorporation by reference of the AOAC International Official Method of Analysis for determining sulfite concentrations in foods and remove Appendix A to Part 101 (21 CFR part 101), as no longer necessary. The rule would also add a recently developed, accurate, and more efficient analytical method to determine sulfite concentrations in foods. If finalized, FDA would use this more modern method; the addition of this method would not affect parties other than FDA. The addition of this method would not affect industry's disclosure obligations. Manufacturers, for example, would be free to use any method to

determine sulfite concentrations in their foods.

*C. Legal Authority*

FDA is issuing this proposed rule to amend part 101 under sections 403(i)(2), 403(a), 201(n), and 701(a) (21 U.S.C. 343(i)(2), 21 U.S.C. 343(a), 21 U.S.C. 321(n), and 371(a)) of the FD&C Act.

*D. Costs and Benefits*

The benefit of this proposed rule would be the cost savings, in the form of time savings, associated with use of the new method. We estimate that, at the mean, the present value of the benefits of this proposed rule is $1.0 million using a 3 percent discount rate and $0.9 million using a 7 percent discount rate (2017$). The cost of this proposed rule would consist of both one-time validation costs and materials costs associated with use of the new method. We estimate that, at the mean, the present value of the costs of this proposed rule would be $0.2 million using either a 3 or a 7 percent discount rate (2017$). At the mean, the estimated present value of the net benefits of this proposed rule would be $0.8 million using a 3 percent discount rate and $0.7 million using a 7 percent discount rate (2017$).

## II. Background

Executive Order 13777, ''Enforcing the Regulatory Reform Agenda'' (*https://www.govinfo.gov/content/pkg/FR-2017-03-01/pdf/2017-04107.pdf,* 82 FR 12285 (March 1, 2017)) was issued on February 24, 2017. One provision in the Executive Order requires agencies to evaluate existing regulations and make recommendations to the Agency head regarding their repeal, replacement, or modification, consistent with applicable law. As part of this initiative, FDA is proposing to update regulations that include an outdated incorporation by reference as specified in this proposed rule and add a recently developed, accurate, and more efficient analytical method of analysis for determining sulfite concentrations in foods.

FDA's food labeling regulations require that sulfites present at more than 10 parts per million (ppm) be labeled on foods. (See § 101.100(a)(4) and § 130.9(a) (21 CFR 130.9(a))). Sulfites are widely used food preservatives that have been shown to produce allergic-type responses in humans, and the presence of sulfites in foods may have serious health implications for those persons who are intolerant of sulfites. The analytical method we use for determining sulfite concentrations in foods is specified at §§ 101.100(a)(4) and 130.9(a), partially through incorporation by reference. In this document, we propose to update the incorporation by reference of the analytical method that we use to determine sulfite concentrations in foods and establish a new, accurate, and more efficient analytical method that we would also use to determine sulfite concentrations in foods. We are also proposing to amend the unit of measure specified in §§ 101.100(a)(4) and 130.9(a) to milligrams per kilogram, which is equivalent to parts per million, to be consistent with the unit of measure specified in the new analytical method.

## III. Legal Authority

FDA is issuing this proposed rule to amend part 101 under sections 403(i)(2), 403(a), 201(n), and 701(a) (21 U.S.C. 343(i)(2), 21 U.S.C. 343(a), 21 U.S.C. 321(n), and 21 U.S.C. 371(a)) of the FD&C Act. Specifically, FDA is proposing to amend § 101.100(a)(4), which describes the analytical method FDA uses to determine whether there is a detectable amount of sulfite in a finished nonstandardized food.

Section 403(i)(2) of the FD&C Act requires that all of the ingredients in a nonstandardized food be declared on the label of that food by their common or usual names unless FDA has exempted the ingredients from such requirements. FDA established such an exemption in § 101.100(a)(3) for ''incidental additives'' that are present in foods at insignificant levels and that do not have any technical or functional effect in the foods. Under § 101.100(a)(4), sulfiting agents will be considered to be present in foods in insignificant amounts only if no detectable amount of sulfite is present in the finished food; a detectable amount of a sulfiting agent is 10 parts per million (ppm) or more. Additionally, section 701 of the FD&C Act permits FDA to promulgate regulations for the efficient enforcement of the FD&C Act. Updating the analytical method FDA will use to determine whether there is a detectable amount of sulfites in a finished nonstandardized food will allow FDA to use current scientific technology for the efficient enforcement of the food labeling requirements.

We are also proposing to amend parts 101 and 130 under sections 403(a) and 201(n) of the FD&C Act. Pursuant to § 130.9, standardized foods containing sulfiting agents that are functional or that are present in the finished food at a detectable amount (10 ppm or more) are deemed misbranded unless the presence of the sulfiting agents is declared on the label. This provision also describes the analytical methods, which are the same as in part 101, for determining the presence of sulfiting agents in food. Section 403(a) of the FD&C Act states that a food is misbranded if its labeling is false or misleading in any particular. Under section 201(n) of the FD&C Act, the extent to which labeling fails to reveal material facts with respect to the consequences which may result from the use of an article under the conditions of use in the labeling or as customary or usual shall be taken into account in determining whether the labeling of that article is misleading. Because sulfiting agents can cause allergic-type responses of unpredictable severity, the presence of a detectable amount of sulfites (as defined at §§ 101.100(a)(4) and 130.9 as 10 ppm or more of sulfites) in a food is a material fact. Therefore, the failure to label a food as containing sulfiting agents renders that label misleading and the food misbranded under sections 403(a) and 201(n) of the FD&C Act.

This proposed rule would update the incorporation by reference for the current analytical method in parts 101 and 130 and also identify a new analytical method that we would use in testing for sulfites in foods to determine compliance. The rule, if finalized, would not require other entities to use these methods. Other entities are free to determine the correlation between the official FDA-designated methods and the entity's method of choice for determining sulfite concentrations in foods and to use their method of choice as they see fit, recognizing that FDA would rely on the methods established by any final rule resulting from this rulemaking.

## IV. Description of the Proposed Rule

We are proposing to amend the regulations that specify the method of analysis that FDA uses when determining sulfite concentrations in foods. These changes are intended to update an outdated incorporation by reference in two provisions, remove an obsolete appendix, and establish a new analytical method that is accurate and more efficient than the current method.

Our regulations at §§ 101.100(a)(4) and 130.9(a) specify the analytical method that FDA uses for determining sulfite concentrations in food. Both of these regulations establish the method of analysis in two steps. The first step incorporates by reference §§ 20.123–20.125, ''Total Sulfurous Acid,'' in ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' 14th Ed. (1984); this method is known as the Monier-Williams method. The second step refines the

Monier-Williams method to improve accuracy and reproducibility and make the method suitable for detecting sulfite concentrations as low as 10 ppm; the modifications are included in Appendix A to Part 101. Collectively, the Monier-Williams method with the Appendix A to Part 101 modifications is referred to as the ''optimized Monier-Williams method.'' After we incorporated by reference the Monier-Williams method and implemented the modifications to that method in Appendix A to Part 101, the AOAC amended the Official Methods of Analysis to include ''Official Method 990.28, Optimized Monier-Williams Method,'' which is the same as the two-step process in FDA's regulations; i.e, the Monier-Williams method and the refinements to the Monier-Williams method in Appendix A to Part 101. As such, this portion of the proposed rule would modernize our regulations to reflect the citation to the current AOAC method for determining sulfite concentrations in food, but would not result in a change in FDA methodology. We are, therefore, proposing to amend §§ 101.100(a)(4) and 130.9(a) to replace the existing incorporation by reference with ''AOAC Official Method 990.28, Sulfites in Foods, Optimized Monier-Williams Method,'' (Final Action 1994), Section 47.3.43, Official Methods of Analysis of AOAC INTERNATIONAL, 21st Edition (2019), and to remove Appendix A to Part 101.

We are also proposing to amend §§ 101.100(a)(4) and 130.9(a) to add a recently developed and published new analytical method for determining sulfite concentrations in foods. A liquid chromatography (LC) tandem mass spectrometry (MS) method (LC–MS/MS method) was recently published (Ref. 1). This method proved to be a faster and more sensitive way to determine sulfite concentrations in foods. FDA's current methodology is an acceptable method for quantifying sulfites, but it is time-consuming, has a method detection limit of 10 ppm, and is unable to accurately determine sulfite concentrations in some samples. The current method also requires specialty glassware, strong familiarity with the method, and almost two hours of distillation, meaning that only three samples per apparatus can be run in one 8-hour work day.

The newly published LC–MS/MS method is a more rapid, specific alternative to Official Method 990.28, with a lower detection limit, and has been validated by other labs to ensure its accuracy for widespread use (Ref. 2). Sample preparation using the LC–MS/MS method involves routine extraction techniques that can easily be batched, allowing for the completion of as many as 30 samples by a single analyst in a single day. By using the LC–MS/MS method, FDA would improve efficiency in testing and could better enforce the labeling requirements for sulfites.

We are also proposing to amend the unit of measure specified in § 101.100(a)(4) and 130.9(a) to include milligrams per kilogram, which is equivalent to parts per million, to be consistent with the unit of measure specified in the new analytical method.

## V. Incorporation by Reference

FDA is proposing to incorporate by reference ''AOAC Official Method 990.28, Sulfites in Foods, Optimized Monier-Williams Method,'' (Final Action 1994), Section 47.3.43, Official Methods of Analysis of AOAC INTERNATIONAL, 21st Edition (2019). You may purchase a copy of the material from AOAC International, 2275 Research Blvd., Ste. 300, Rockville, MD 20850–3250, 301–924–7077 ext. 170, *www.aoac.org.* This method is an updated version of the method currently referenced in FDA's regulations as the method that FDA uses to determine sulfite concentrations in foods.

FDA is also proposing to incorporate by reference ''Determination of Sulfite in Food by Liquid Chromatography Tandem Mass Spectrometry: Collaborative Study,'' Journal of AOAC International Vol. 100, No. 6, pp. 1785–1794. You may purchase a copy of the material from AOAC International, 2275 Research Blvd., Ste. 300, Rockville, MD 20850–3250, 301–924–7077 ext. 170, *www.aoac.org.* The study describes a liquid chromatography tandem mass spectrometry method that FDA would use for the determination of sulfite concentrations in foods as an alternative to AOAC Official Method 990.28.

## VI. Proposed Effective Date

We are proposing that any final rule resulting from this rulemaking become effective 30 days after the date of its publication in the **Federal Register**.

## VII. Economic Analysis of Impacts

We have examined this proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this proposed rule would not be a significant regulatory action as defined by Executive Order 12866 and would be a deregulatory action for purposes of Executive Order 13771.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. This proposed rule would amend the regulations that specify the method of analysis that FDA uses to determine the concentration of sulfites in foods and would not require other entities to use these methods. Hence, the scope of this proposed rule is limited to FDA. We, therefore, propose to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $154 million, using the most current (2018) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

This proposed rule would amend the regulations that specify the method of analysis that FDA uses to determine the concentration of sulfites in foods. The currently specified method of analysis is the optimized Monier-Williams method. This rule proposes to update the incorporation by reference for FDA's current methodology and add to this a recently developed, accurate, and more efficient analytical method of analysis, referred to as the LC–MS/MS method. The LC–MS/MS method would serve as the primary method used by FDA to determine sulfite concentrations in foods if this proposed rule becomes finalized.

The benefit of this proposed rule would be the cost savings, in the form of time savings, associated with use of the LC–MS/MS method. There would be no impact from the update to the incorporation by reference for FDA's

current methodology (*i.e.,* the optimized Monier-Williams method) because only the reference would change, not the method. Using a standard 10-year time horizon, we estimate that the present value of the benefits of this proposed rule ranges from $0.5 million to $1.7 million, with a mean estimate of $1.0 million, using a 3 percent discount rate, and ranges from $0.4 million to $1.4 million, with a mean estimate of $0.9 million, using a 7 percent discount rate (2017$). Annualized benefits, which are illustrated below in table 1, are estimated to range from $0.06 million per year to $0.2 million per year, with a mean estimate of $0.1 million per year, using either a 3 percent or a 7 percent discount rate (2017$).

The cost of this proposed rule would consist of both one-time validation costs and materials costs associated with use of the LC–MS/MS method. Using a standard 10-year time horizon, we estimate that the present value of the total costs of this proposed rule is $0.2 million, using a 3 percent discount rate, and ranges from $0.1 million to $0.2 million, with a mean estimate of $0.2 million, using a 7 percent discount rate (2017$). We estimate that annualized costs, which are presented below in table 1, are $0.02 million per year, using either a 3 percent or a 7 percent discount rate (2017$).

The estimated net benefits of this proposed rule are defined as the difference between the estimated benefits and the estimated costs of the rule. Using a standard 10-year time horizon, we estimate that the present value of the net benefits of this proposed rule ranges from $0.3 million to $1.5 million, with a mean estimate of $0.8 million, using a 3 percent discount rate, and ranges from $0.3 million to $1.2 million, with a mean estimate of $0.7 million, using a 7 percent discount rate (2017$). Annualized net benefits are estimated to range from $0.04 million per year to $0.18 million per year, with a mean estimate of $0.09 million per year, using a 3 percent discount rate, and from $0.04 million per year to $0.17 million per year, with a mean estimate of $0.10 million per year, using a 7 percent discount rate (2017$).

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

[Millions of 2017$]

| Category | Primary estimate | Low estimate | High estimate | Units | | | Notes |
|---|---|---|---|---|---|---|---|
| | | | | Year dollars | Discount rate (%) | Period covered (years) | |
| Benefits: | | | | | | | |
| Annualized Monetized $millions/year | $0.10 | $0.06 | $0.20 | 2017 | 7 | 10 | Are cost savings. |
| | $0.10 | $0.06 | $0.20 | 2017 | 3 | 10 | Are cost savings. |
| Annualized Quantified | | | | | 7 | | |
| | | | | | 3 | | |
| Qualitative. | | | | | | | |
| Costs: | | | | | | | |
| Annualized Monetized $millions/year | $0.02 | $0.02 | $0.02 | 2017 | 7 | 10. | |
| | 0.02 | 0.02 | 0.02 | 2017 | 3 | 10. | |
| Annualized Quantified | | | | | 7 | | |
| | | | | | 3 | | |
| Qualitative. | | | | | | | |
| Transfers: | | | | | | | |
| Federal Annualized Monetized $millions/year. | | | | | 7 | | |
| | | | | | 3 | | |
| From/To | From: | | | To: | | | |
| Other Annualized Monetized $millions/year. | | | | | 7 | | |
| | | | | | 3 | | |
| From/To | From: | | | To: | | | |
| Effects: | | | | | | | |
| State, Local or Tribal Government: | | | | | | | |
| Small Business: | | | | | | | |
| Wages: | | | | | | | |
| Growth: | | | | | | | |

In line with Executive Order 13771, in table 2 we estimate present and annualized values of costs and cost savings over an infinite time horizon. Based on these cost savings, this proposed rule would be considered a deregulatory action under Executive Order 13771.

TABLE 2—EXECUTIVE ORDER 13771 SUMMARY TABLE

[Millions of 2016$, over an infinite time horizon]

| Item | Primary estimate (7%) | Lower estimate (7%) | Upper estimate (7%) | Primary estimate (3%) | Lower estimate (3%) | Upper estimate (3%) |
|---|---|---|---|---|---|---|
| Present Value of Costs | $0.2 | $0.2 | $0.2 | $0.6 | $0.6 | $0.6 |
| Present Value of Cost Savings | 1.4 | 0.7 | 2.2 | 3.6 | 1.9 | 5.8 |
| Present Value of Net Costs | (1.2) | (0.5) | (2.0) | (3.0) | (1.3) | (5.2) |
| Annualized Costs | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 |
| Annualized Cost Savings | 0.10 | 0.05 | 0.20 | 0.10 | 0.06 | 0.20 |

TABLE 2—EXECUTIVE ORDER 13771 SUMMARY TABLE—Continued

[Millions of 2016$, over an infinite time horizon]

| Item | Primary estimate (7%) | Lower estimate (7%) | Upper estimate (7%) | Primary estimate (3%) | Lower estimate (3%) | Upper estimate (3%) |
|---|---|---|---|---|---|---|
| Annualized Net Costs | (0.08) | (0.04) | (0.14) | (0.09) | (0.04) | (0.16) |

**Notes:** All amounts are in 2016$ and have been discounted relative to year 2016 from year 2019, the latter which is the estimated year in which the proposed rule would become effective if finalized.

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 3) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

## VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

## XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We invite comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

## XII. References

The following references marked with an asterisk (*) are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Robbins, K.S., Shah, R., MacMahon, and de Jager, L.S. (2015), ''Development of a Liquid Chromatography-Tandem Mass Spectrometry Method for the Determination of Sulfite in Food,'' *Journal of Agricultural and Food Chemistry* 63, 5126–5132, *https://www.ncbi.nlm.nih.gov/pubmed/25695590.*

2. Carlos, K.S. and L.S. de Jager (2017), ''Determination of Sulfite in Food by Liquid Chromatography Tandem Mass Spectrometry: Collaborative Study,'' *Journal of AOAC International,:* 100, 6, 1785–1794, *https://www.ncbi.nlm.nih.gov/pubmed/29137699.*

*3. FDA, ''Amendment to Add a New Method for the Analysis of Sulfites in Foods: Preliminary Regulatory Impact Analysis,'' 2018, available at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

## List of Subjects

*21 CFR Part 101*

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

*21 CFR Part 130*

Food additives, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR parts 101 and 130 be amended as follows:

## PART 101—FOOD LABELING

■ 1. The authority citation for part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Amend § 101.100 by revising paragraph (a)(4) to read as follows:

**§ 101.100 Food; exemptions from labeling.**

(a) * * *

(4) For the purposes of paragraph (a)(3) of this section, any sulfiting agent (sulfur dioxide, sodium sulfite, sodium bisulfite, potassium bisulfite, sodium metabisulfite, and potassium metabisulfite) that has been added to any food or to any ingredient in any food and that has no technical effect in that food will be considered to be present in an insignificant amount only if no detectable amount of the agent is present in the finished food. A detectable amount of sulfiting agent is 10 parts per million (ppm or mg/kg) or more of the sulfite in the finished food. Compliance with this paragraph will be determined using either:

(i) ''Determination of Sulfite in Food by Liquid Chromatography Tandem Mass Spectrometry,'' in *Journal of AOAC International,* Vol. 100, No. 6, pp. 1785–1794, which is incorporated by reference. A copy of *Journal of AOAC International,* Vol. 100, No. 6, is available from AOAC International, 2275 Research Blvd., Ste. 300, Rockville, MD 20850–3250, or available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html;* or

(ii) ''AOAC Official Method 990.28, Sulfites in Foods, Optimized Monier-Williams Method,'' in *Official Methods of Analysis of AOAC International,* Sec. 47.3.43 (2019), which is incorporated by reference. A copy of AOAC Official Method 990.28 is available from AOAC International, 2275 Research Blvd., Ste. 300, Rockville, MD 20850–3250, or available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

■ 3. Remove and reserve Appendix A to Part 101.

## PART 130—FOOD STANDARDS: GENERAL

■ 4. The authority citation for part 130 continues to read as follows:

**Authority:** 21 U.S.C. 321, 336, 341, 343, 371.

■ 5. Amend § 130.9 by revising paragraph (a) to read as follows:

### § 130.9 Sulfites in standardized food.

(a) Any standardized food that contains a sulfiting agent or combination of sulfiting agents that is functional and provided for in the applicable standard or that is present in the finished food at a detectable concentration is misbranded unless the presence of the sulfiting agent or agents is declared on the label of the food. A detectable amount of sulfiting agent is 10 parts per million (ppm or mg/kg) or more of the sulfite in the finished food. The concentration of sulfite in the finished food will be determined using either:

(1) ''Determination of Sulfite in Food by Liquid Chromatography Tandem Mass Spectrometry,'' in *Journal of AOAC International,* Vol. 100, No. 6, pp. 1785–1794, which is incorporated by reference. A copy of *Journal of AOAC International,* Vol. 100, No. 6 is available from AOAC International, 2275 Research Blvd., Ste. 300, Rockville, MD 20850–3250, or available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html;* or

(2) ''AOAC Official Method 990.28, Sulfites in Foods, Optimized Monier-Williams Method,'' in *Official Methods of Analysis of AOAC International,* Sec. 47.3.43 (2019), which is incorporated by reference. A copy of AOAC Official Method 990.28 is available from AOAC International, 2275 Research Blvd., Ste. 300, Rockville, MD 20850–3250, or available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

Dated: July 16, 2019.

**Norman E. Sharpless,**

*Acting Commissioner of Food and Drugs.*

Dated: September 3, 2019.

**Eric D. Hargan,**

*Deputy Secretary, Department of Health and Human Services.*

[FR Doc. 2019–19862 Filed 9–16–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

**[Docket No. DEA–496]**

## Control of the Immediate Precursor Norfentanyl Used in the Illicit Manufacture of Fentanyl as a Schedule II Controlled Substance

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Drug Enforcement Administration (DEA) proposes to designate the precursor chemical, *N*-phenyl-*N*-(piperidin-4-yl)propionamide (norfentanyl) as an immediate precursor for the schedule II controlled substance fentanyl. Furthermore, the DEA proposes to control norfentanyl as a schedule II substance under the Controlled Substances Act (CSA). Norfentanyl is the immediate chemical intermediary in a synthesis process currently used by clandestine laboratory operators for the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of thousands of fentanyl-related overdoses in the United States in recent years. The DEA believes that the control of norfentanyl as a schedule II controlled substance is necessary to prevent its diversion as an immediate chemical intermediary for the illicit production of fentanyl.

**DATES:** Comments must be submitted electronically or postmarked on or before November 18, 2019. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–496'' on all electronic and written correspondence, including any attachments.

• *Electronic comments:* The DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate the electronic submissions are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Scott A. Brinks, Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

**SUPPLEMENTARY INFORMATION:**

### Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the DEA for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL

IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this proposed rule is available at *http://www.regulations.gov* for easy reference.

**Legal Authority**

Under 21 U.S.C. 811(e), the Attorney General may place an immediate precursor into the same schedule as the controlled substance that the immediate precursor is used to make, if the substance meets the requirements of an immediate precursor under 21 U.S.C. 802(23).

**Background**

The DEA is extremely concerned with the increase in the illicit manufacture and distribution of fentanyl. Fentanyl is a synthetic opioid and was first synthesized in Belgium in the late 1950's. Fentanyl is controlled in schedule II of the CSA due to its high potential for abuse and dependence, and accepted medical use in treatment in the United States. Fentanyl was introduced into medical practice and is approved in the United States for anesthesia and analgesia. However, due to its pharmacological effects, fentanyl can serve as a substitute for heroin, oxycodone, and other opioids in opioid dependent individuals. The trafficking of fentanyl in the United States continues to pose an imminent hazard to the public safety. Since 2012, fentanyl has shown a dramatic increase in the illicit drug supply as a single substance, in mixtures with other illicit drugs (*i.e.* heroin, cocaine, and methamphetamine), or in forms that mimic pharmaceutical preparations including prescription opiates and benzodiazepines.

The DEA has noted a significant increase in overdoses and overdose fatalities from fentanyl in the United States in recent years. A recent report [1] from the Centers for Disease Control and Prevention (CDC) highlights this trend. According to this report, of the 41,430 drug overdose deaths occurring in the United States in 2011, 1,662 (4.0%) involved fentanyl.[2] Of the 63,632 drug overdose deaths in 2016, 18,335 (28.8%) involved fentanyl. This was the first time that fentanyl was reported in more drug related fatalities than heroin.

The increase of drug overdose deaths continued into 2017. According to the CDC,[3] there were 70,237 drug overdose deaths in the United States in 2017, an increase from the 63,632 overdose deaths recorded in 2016. Of the 70,237 overdose deaths in 2017, 47,600 (67.8%) involved an opioid. Deaths involving prescription opioids and heroin remained stable from 2016 to 2017; synthetic opioid overdose deaths (other than methadone), which include deaths related to fentanyl, increased 45.2% from 19,413 deaths in 2016 to 28,466 deaths in 2017.

The increase in overdose fatalities involving fentanyl coincides with a dramatic increase of law enforcement encounters of fentanyl. According to the National Forensic Laboratory Information System (NFLIS),[4] submissions to forensic laboratories that contained fentanyl increased exponentially beginning in 2012: 694 in 2012, 1,044 in 2013, 5,537 in 2014, 15,455 in 2015, 37,294 in 2016, 61,382 in 2017, and 70,453 in 2018.

**Role of Norfentanyl in the Synthesis of Fentanyl**

Fentanyl is not a naturally occurring substance. As such, the manufacture of fentanyl requires it to be produced through synthetic organic chemistry. Synthetic organic chemistry is the process for creating a new organic molecule through a series of chemical reactions, which involve precursor chemicals. In the early 2000's, a synthetic process, commonly known as the Siegfried method, was utilized to manufacture fentanyl in several domestic and foreign clandestine laboratories. 72 FR 20039. At that time, the DEA had determined that two primary synthesis routes (*i.e.,* the Janssen method and the Siegfried method) were being used to produce fentanyl clandestinely, although it believed the Janssen synthesis route to be difficult to perform and beyond the rudimentary skills of most clandestine laboratory operators. The Siegfried synthetic route involves two important intermediates, *N*-phenethyl-4-piperidone (NPP) and 4-anilino-*N*-phenethylpiperidine (ANPP). The DEA controlled NPP on April 23, 2007 as a list I chemical by interim rule (72 FR 20039), which was finalized on July 25, 2008. 73 FR 43355. ANPP was controlled as a schedule II immediate precursor to fentanyl on August 30, 2010. 75 FR 37295. (June 29, 2010).

In 2017, the United Nations Commission on Narcotic Drugs placed NPP and ANPP in Table I of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (1988 Convention) in response to the international increase of fentanyl on the illicit drug market. As such, member states of the United Nations were required to regulate these precursor chemicals at the national level. In addition, the People's Republic of China regulated NPP and ANPP on February 1, 2018.

Recent law enforcement information indicates that illicit manufacturers of fentanyl also use other synthetic routes in response to regulations placed on NPP and ANPP. One of these other routes is the original published synthetic pathway to fentanyl, known as the Janssen method, previously thought to be beyond the skills of most clandestine laboratory operators. This synthetic route does not involve NPP or ANPP as precursors. This synthetic pathway involves the important precursors *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and *N*-phenyl-*N*-(piperidin-4-yl)propionamide (norfentanyl). Benzylfentanyl, which is subject to a Notice of Proposed Rulemaking for control as a list I chemical published elsewhere in this issue of the **Federal Register**, is converted into norfentanyl in one chemical reaction. Norfentanyl is

[1] Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2011–2016. National Vital Statistics Reports; vol 67 no 9. Hyattsville, MD: National Center for Health Statistics, 2018.

[2] The fentanyl category includes fentanyl, fentanyl metabolites, precursors, and analogs.

[3] Scholl L, Seth P, Kariisa M, Wilson N, Baldwin G. Drug and Opioid-Involved Overdose Deaths—United States, 2013–2017. MMWR Morb Mortal Wkly Rep 2019;67:1419–1427.

[4] The National Forensic Laboratory Information System (NFLIS) is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by Federal, State and local forensic laboratories in the United States. NFLIS data was queried on March 26, 2019.

then subjected to one simple chemical reaction to complete the synthesis of fentanyl. The DEA is not aware of any legitimate uses of benzylfentanyl or norfentanyl other than in the synthesis of fentanyl.

According to DEA forensic laboratory data, the Janssen method was confirmed as the synthetic route used in 94% of 85 fentanyl drug exhibits that were evaluated to determine the synthetic route. These exhibits were seized in 2018. In addition, the number of law enforcement encounters of benzylfentanyl increased in 2017 and 2018. As stated above, benzylfentanyl is a precursor chemical used to synthesize norfentanyl in the Janssen method. According to NFLIS,[5] there was one identification of benzylfentanyl in 2016; however, benzylfentanyl was identified in 195 reports in 2017 and 237 reports in 2018. This is believed to indicate a change in the synthetic route used by some clandestine chemists to manufacture fentanyl in efforts to evade chemical regulations on NPP and ANPP. The increase in law enforcement encounters coincides with the international control that placed NPP and ANPP in Table I of the 1988 Convention in 2017.

The DEA determined that norfentanyl is commercially available from both domestic and foreign chemical suppliers. The DEA has identified 30 domestic suppliers and 22 foreign suppliers of norfentanyl from Canada (3), China (7), Germany (2), Hong Kong (1), India (1), Japan (2), Switzerland (1), and the United Kingdom (5). Of the 30 domestic suppliers of norfentanyl, only one is a DEA registrant. As it appears that these other 29 suppliers are not registered to manufacture schedule II controlled substances, it is not likely these suppliers are manufacturing fentanyl. Norfentanyl is attractive to illicit manufacturers because of the lack of chemical regulations on this substance, it is readily available from chemical suppliers, and it can easily be converted to the schedule II controlled substance fentanyl, in a one-step chemical reaction.

**Designation as an Immediate Precursor**

Under 21 U.S.C. 811(e), the Attorney General may place an immediate precursor into the same schedule as the controlled substance that the immediate precursor is used to make. The substance must meet the requirements of an immediate precursor under 21 U.S.C. 802(23). The term ''immediate precursor'' as defined in 21 U.S.C. 802(23) means a substance:

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

The DEA finds that norfentanyl meets the three criteria for the definition of an immediate precursor under 21 U.S.C. 802(23). First, the DEA finds that norfentanyl is produced primarily for use in the manufacture of the schedule II controlled substance fentanyl. As stated in the preceding section, under the Janssen method, norfentanyl is typically produced from the starting material benzylfentanyl and is then subjected to a simple one-step chemical reaction to obtain the schedule II controlled substance, fentanyl. The DEA is not aware of any legitimate use of benzylfentanyl other than in the synthesis of norfentanyl, and subsequently, fentanyl. The DEA has also not identified an industrial or other use for norfentanyl beyond the manufacture of fentanyl. Although DEA has not identified any other legitimate uses of norfentanyl, this notice of proposed rulemaking provides the public an opportunity to provide information to the contrary, as described in the ''Solicitation for Information'' section below.

Second, the DEA finds that norfentanyl is an immediate chemical intermediary used in the manufacture of the controlled substance fentanyl. As stated earlier, norfentanyl is produced as an intermediary in the fentanyl synthetic pathway. After it is synthesized, norfentanyl is subjected to a simple chemical reaction that converts it directly to fentanyl.

Third, the DEA finds that controlling norfentanyl is necessary to prevent, curtail, and limit the unlawful manufacture of the controlled substance, fentanyl. The DEA believes this action is necessary to assist in preventing the possible theft of norfentanyl from legitimate firms. The DEA believes that clandestine manufacturers will attempt to procure unregulated chemicals in effort to synthesize fentanyl. As a schedule II substance, norfentanyl will be safeguarded to the same degree that pharmaceutical firms now safeguard the fentanyl that they produce. Since norfentanyl is an immediate chemical intermediary in the manufacture of fentanyl, the increased level of security is necessary to prevent diversion of norfentanyl from legitimate firms. The DEA also believes control is necessary to prevent unscrupulous chemists from synthesizing norfentanyl and selling it (as an unregulated material) through the internet and other channels to individuals who may wish to acquire an unregulated precursor for the purpose of manufacturing fentanyl, a schedule II controlled substance.

The DEA believes that the control of norfentanyl is necessary to prevent its production and use in the illicit production of fentanyl. Therefore, the DEA is proposing the designation of norfentanyl as an immediate precursor of fentanyl, a schedule II controlled substance, pursuant to 21 U.S.C. 802(23) and 21 U.S.C. 811(e).

**Proposed Placement in Schedule II—Findings Required Under CSA Immediate Precursor Provisions**

Pursuant to 21 U.S.C. 811(e), once norfentanyl is designated as an immediate precursor under 21 U.S.C. 802(23), it may be placed directly into schedule II (or a schedule with a higher numerical designation). The immediate precursor provision in 21 U.S.C. 811(e) permits the DEA to schedule an immediate precursor ''without regard to the findings required by'' section 811(a) or section 812(b) and ''without regard to the procedures'' prescribed by section 811(a) and (b). Accordingly, the DEA need not address the ''factors determinative of control'' in section 811 or the findings required for placement in schedule II in section 812(b)(2). Based on the finding that norfentanyl is an ''immediate precursor'' for fentanyl, the DEA proposes to place norfentanyl directly into schedule II.

**Requirements for Handling Norfentanyl**

The proposed scheduling of norfentanyl as an immediate precursor of the schedule II controlled substance, fentanyl, would subject norfentanyl to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule II controlled substance. If norfentanyl is placed in schedule II, the regulatory requirements will include the following:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports, or exports norfentanyl, engages in research with respect to norfentanyl, or proposes to engage in such activities would be required to submit an application and be accepted for

[5] NFLIS data was queried on March 26, 2019.

schedule II registration in accordance with 21 CFR part 1301.

2. *Security.* Norfentanyl would be subject to schedule II security requirements. In order to prevent diversion, norfentanyl would have to be manufactured, distributed, and stored in accordance with the standards for physical security and the operating procedures set forth in 21 CFR 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of norfentanyl that are distributed would be required to comply with the requirements of 21 CFR 1302.03–1302.07.

4. *Quotas.* Quotas for norfentanyl would be established pursuant to 21 CFR part 1303.

5. *Inventory.* Every registrant who possesses any quantity of norfentanyl would be required to keep an inventory of all stocks of the substance on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304.11.

6. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports with respect to norfentanyl pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes norfentanyl would be required to comply with the order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of norfentanyl would be required to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity with norfentanyl in violation of or not authorized under the Controlled Substances Act or the Controlled Substances Import and Export Act would be unlawful and potentially subject to criminal penalties (21 U.S.C. 841–863 and 959–964).

**Solicitation for Information**

As part of this proposed rulemaking, the DEA is soliciting information on any possible legitimate uses of norfentanyl unrelated to fentanyl production (including industrial uses) in order to assess the potential commercial impact of scheduling norfentanyl. The DEA has searched information in the public domain for legitimate uses of norfentanyl and has not documented legitimate commercial uses for norfentanyl other than as an intermediary chemical in the production of fentanyl. The DEA seeks, however, to document any unpublicized use(s) and other proprietary use(s) of norfentanyl not in the public domain. Therefore, the DEA is soliciting comment on the uses of norfentanyl in the legitimate marketplace. DEA is also soliciting comment on the regulatory burden to legitimate commercial activities that would result from the proposed placement of norfentanyl in schedule II of the CSA.

The DEA is soliciting input from all potentially affected parties regarding: (1) The types of legitimate industries using norfentanyl; (2) the legitimate uses of norfentanyl; (3) the size of the domestic market for norfentanyl; (4) the number of manufacturers of norfentanyl; (5) the number of distributors of norfentanyl; (6) the level of import and export of norfentanyl; (7) the potential burden these proposed regulatory controls of norfentanyl may have on legitimate commercial activities; (8) the potential number of individuals/firms that may be adversely affected by these proposed regulatory controls (particularly with respect to the impact on small businesses); and (9) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of norfentanyl by industry and others. The DEA invites all interested parties to provide any information on any legitimate uses of norfentanyl in industry, commerce, academia, research and development, or other applications. The DEA seeks both quantitative and qualitative data.

**Handling of Confidential or Proprietary Information**

Confidential or proprietary information may be submitted as part of a comment regarding this Notice of Proposed Rulemaking. Please see the ''POSTING OF PUBLIC COMMENTS'' section above for a discussion of the identification and redaction of confidential business information and personally identifying information.

**Regulatory Analyses**

*Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs*

This proposed rule was developed in accordance with the principles of Executive Orders 12866, 13563, and 13771. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The DEA has determined that this proposed rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f).

Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation.[6] In furtherance of this requirement, Executive Order 13771 requires that the new incremental costs associated with new regulations, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.[7] According to guidance provided by OMB, the requirements of Executive Order 13771 only apply to each new ''significant regulatory action that . . . imposes costs.'' [8] This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

The scheduling of norfentanyl as an immediate precursor of the schedule II controlled substance, fentanyl, would subject norfentanyl to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution,

[6] Sec. 2(a).

[7] Sec. 2(c).

[8] OMB Guidance Implementing Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs'' (April 5, 2017).

dispensing, importing, and exporting of a schedule II controlled substance. Norfentanyl is the immediate chemical intermediary in a synthesis process currently used by clandestine laboratory operators for the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of thousands of fentanyl-related overdoses in the United States in recent years.

The DEA has not identified any use for norfentanyl, other than its role as an intermediary chemical in the production of fentanyl. Based on the review of import and quota information for ANPP and fentanyl, the DEA believes the vast majority, if not all, of legitimate pharmaceutical fentanyl is produced from ANPP (schedule II immediate precursor for fentanyl), not norfentanyl. The quantities of ANPP permitted in the U.S., imported or manufactured pursuant to a quota, generally correspond with the quantities of legitimate pharmaceutical fentanyl produced in the U.S. Additionally, the DEA is not aware of norfentanyl being used for the manufacturing of legitimate pharmaceutical fentanyl; however, the DEA cannot rule out the possibility that minimal quantities of norfentanyl are used for this purpose. If there are any quantities of norfentanyl used for the manufacturing of legitimate pharmaceutical fentanyl, the quantities are believed to be small and economically insignificant.

The DEA evaluated the costs and benefits of this proposed action.

Costs

DEA believes the market for norfentanyl for the legitimate manufacturing of pharmaceutical fentanyl is minimal. As stated above, the only use for norfentanyl of which the DEA is aware is for the manufacturing of fentanyl. Any manufacturer, distributor, importer, or exporter of norfentanyl for the production of legitimate pharmaceutical fentanyl, if they exist at all, would incur costs if this proposed rule were finalized. The primary costs associated with this proposed rule include costs associated with complying with registration, physical security, labeling and packaging, quota, inventory, recordkeeping and reporting, and importation and exportation requirements. Other than the annual registration fees ($3,047 for manufacturers and $1,523 for distributors, importers, and exporters), due to the many unknowns and variability between entities, it is highly difficult to quantify the potential total cost burden of this proposed regulation. However, any manufacturer that uses norfentanyl for legitimate pharmaceutical fentanyl production would already be registered with the DEA and have all security and other handling processes in place, resulting in minimal cost. Any lost sales or profit attributed to those manufacturers or suppliers that are not for legitimate pharmaceutical fentanyl are excluded from the analysis as they are, whether passively or actively, facilitating the manufacture of illicit fentanyl.

The DEA has identified 30 domestic suppliers of norfentanyl, 29 of which are not registered with the DEA to handle schedule II controlled substances. It is difficult to estimate how much norfentanyl is distributed by these suppliers. It is common for chemical distributors to have items on their catalog while not actually having any material level of sales. Based on the review of import and quota information for fentanyl and ANPP, where the quantities of ANPP imported and manufactured generally correspond with the quantities of fentanyl produced, the DEA believes any quantity of sales from these distributors for the legitimate pharmaceutical fentanyl manufacturing is minimal. If this proposed rule is finalized, suppliers for the legitimate use of norfentanyl are expected to choose the least-cost option, and stop selling the minimal quantities, if any, of norfentanyl, rather than incur the costs of complying with the regulatory requirements. Because the DEA believes the quantities of norfentanyl supplied for the legitimate manufacturing of pharmaceutical fentanyl is minimal, the DEA estimates that the cost of foregone sales is minimal; and thus, the cost of this proposed rule is minimal. The DEA welcomes any public comment regarding this estimate.

This analysis excludes consideration of economic impact to those businesses that facilitate the manufacturing and distribution of norfentanyl for the production of manufacturing illicit fentanyl. The only use for norfentanyl of which the DEA is currently aware is the production of fentanyl. Although these suppliers are selling a currently unregulated substance, they wittingly or unwittingly facilitate the manufacturing of illicit fentanyl. As a law enforcement organization and as a matter of principle, the DEA believes considering the economic utility of facilitating the manufacture of illicit fentanyl would be improper.

Benefits

Controlling norfentanyl is expected to prevent, curtail, and limit the unlawful manufacture and distribution of the controlled substance, fentanyl. This action is also expected to assist preventing the possible theft or diversion of norfentanyl from any legitimate firms. As a schedule II substance, norfentanyl would be safeguarded to the same degree that pharmaceutical firms now safeguard the fentanyl that they produce. The DEA also believes control is necessary to prevent unscrupulous chemists from synthesizing norfentanyl and selling it (as an unregulated material) through the internet and other channels, to individuals who may wish to acquire an unregulated precursor for the purpose of manufacturing illicit fentanyl.

In summary, the DEA conducted a qualitative analysis of costs and benefits. The DEA believes this action, if finalized, will minimize the diversion of norfentanyl. The DEA believes the market for norfentanyl for the legitimate manufacturing of pharmaceutical fentanyl is minimal. Therefore, any potential cost as a result of this regulation is minimal. Therefore, the estimated economic impact of this proposed rule is less than $100 million in any given year.

*Executive Order 12988, Civil Justice Reform*

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

*Executive Order 13132, Federalism*

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. This proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*Regulatory Flexibility Act*

The Acting Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. As discussed above, the proposed scheduling of norfentanyl as an immediate precursor of the schedule II controlled substance, fentanyl, would subject norfentanyl to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule II controlled substance. Norfentanyl is the immediate chemical intermediary in a synthesis process currently used by clandestine laboratory operators for the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of thousands of fentanyl-related overdoses in the United States in recent years.

The DEA has not identified any use for norfentanyl, other than its role as an intermediary chemical in the production of fentanyl. Based on the review of import and quota information for ANPP and fentanyl, the DEA believes the vast majority, if not all, of legitimate pharmaceutical fentanyl is produced from ANPP (schedule II immediate precursor for fentanyl), not norfentanyl. The quantities of ANPP permitted in the U.S., imported or manufactured pursuant to a quota, generally correspond with the quantities of legitimate pharmaceutical fentanyl produced in the U.S. Additionally, the DEA is not aware of norfentanyl being used for the manufacturing of legitimate pharmaceutical fentanyl; however, the DEA cannot rule out the possibility that minimal quantities of norfentanyl are used for this purpose. If there are any quantities of norfentanyl used for the manufacturing of legitimate pharmaceutical fentanyl, the quantities are believed to be small and economically insignificant.

The DEA has identified 30 domestic suppliers of norfentanyl. Based on Small Business Administration size standard for chemical distributors and Statistics of U.S. Business data, 94.5% or 28.4 (rounded to 28) are estimated to be small entities. It is difficult to know how much norfentanyl is distributed by these suppliers. It is common for chemical distributors to have items on their catalog while not actually having any material level of sales. Based on the review of import and quota information for fentanyl and ANPP, where the quantities of ANPP imported and manufactured generally correspond with the quantities of fentanyl produced, the DEA believes any quantity of sales from these distributors for the legitimate pharmaceutical fentanyl manufacturing is minimal. Therefore, the DEA estimates the cost of this rule on any affected small entity is minimal. The DEA welcomes any public comment regarding this estimate.

Because of these facts, this proposed rule will not, if promulgated, result in a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, the DEA determined and certifies pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

*Paperwork Reduction Act*

This proposed action does not impose a new collection of information under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This proposed action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

**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 proposes to amend 21 CFR part 1308 as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

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

■ 2. Amend § 1308.12 by adding a new paragraph (g)(3)(ii) and adding and reserving paragraph (g)(3)(iii) to read as follows.

**§ 1308.12 Schedule II.**

* * * * *

(g) * * *

(3) * * *

(ii) *N*-phenyl-*N*-(piperidin-4-yl)propionamide (norfentanyl)—8366

(iii) [Reserved]

* * * * *

Dated: September 6, 2019.

**Uttam Dhillon,**

*Acting Administrator.*

[FR Doc. 2019–19786 Filed 9–16–19; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 5, 92, 93, 574, 960, 966, 982

**[Docket No FR–6057–P–01]**

**RIN 2577–AD03**

## Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, and Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Housing Opportunity Through Modernization Act of 2016 (HOTMA) was enacted on July 29, 2016. This proposed rule would revise HUD regulations to put sections 102, 103, and 104 of HOTMA into effect. These sections make sweeping changes to the United States Housing Act of 1937, particularly those affecting income calculation and reviews. Section 102 changes requirements pertaining to income reviews for public housing and HUD's Section 8 programs. Section 103 modifies the continued occupancy standards of public housing residents whose income has grown above the threshold for initial eligibility. Section 104 sets maximum limits on the assets that families residing in public housing and Section 8 assisted housing may have. Additionally, section 104 provides that HUD must direct public housing agencies to require that all applicants for and recipients of assistance through HUD's public housing or Section 8

programs provide authorization for public housing agencies to obtain financial records needed for eligibility determinations. In addition to amending regulations for HUD's public housing and Section 8 programs, this proposed rule would change regulations of other HUD programs that, for consistency, adopted regulations of programs that are based on statutory provisions amended by sections 102 and 104. Therefore, this rule makes changes that affect HUD's HOME Investment Partnerships, Housing Trust Fund, and Housing Opportunities for Persons With AIDS programs, as well as HUD's public housing and Section 8 programs.

**DATES:** *Comment Due Date:* November 18, 2019.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.* To receive consideration as public comments, comments must be submitted through one of the two methods specified below. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures their timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

**FOR FURTHER INFORMATION CONTACT:**

*Public Housing, Housing Choice Voucher (including project-based vouchers), and moderate rehabilitation programs,* at *HOTMAquestions@hud.gov.*

*Multifamily Housing programs:* Kate Nzive, Director, Assisted Housing Oversight Division, Office of Multifamily Housing, at *katherine.a.nzive@hud.gov.*

*HOME Investment Partnerships and Housing Trust Fund programs:* Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, at 202–708–2684.

*Housing Opportunities for Persons With AIDS program:* Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, at 202–402–5374.

Persons with hearing or speech impairments may access the above telephone numbers through TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

The mailing address for each office contact is Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On July 29, 2016, HOTMA was signed into law (Pub. L. 114–201, 130 Stat. 782). HOTMA makes numerous changes to statutes governing HUD programs, including sections 3, 8, and 16 of the United States Housing Act of 1937 (1937 Act). HUD issued a notice in the **Federal Register** on October 24, 2016, at 81 FR 73030, announcing which statutory changes made by HOTMA could be implemented immediately and which statutory changes require further action by HUD.

On November 29, 2016, HUD published another **Federal Register** notice (81 FR 85996), seeking public input on how HUD should determine the income limit for public housing residents, pursuant to section 103 of HOTMA, and this was followed by a July 26, 2018, notice (83 FR 35490) that made some provisions of section 103 of HOTMA effective. On January 18, 2017, HUD published a **Federal Register** notice (82 FR 5458), that made multiple HOTMA provisions for the Housing Choice Voucher (HCV) program, unrelated to sections 102, 103, and 104, effective and solicited public comment on HUD's implementation methods. The conforming regulatory changes for the HCV program provisions implemented by the January 18, 2017, **Federal Register** notice are not part of this proposed rule and will be addressed through a separate rulemaking.

Many of the statutory provisions in HOTMA are intended to streamline administrative processes and reduce burdens on public housing agencies (PHAs) and private owners. Sections 102, 103, and 104 of HOTMA require that HUD make changes to its regulations and take other actions—some of which will also reduce burdens on PHAs and private owners once implemented.

### *A. HOTMA Section 102*

Section 102 of HOTMA deals with income reviews in HUD's public housing and Section 8 programs. Section 102(a) amends section 3(a) of the 1937 Act to revise the frequency of family income reviews and the calculation of income and requires HUD, in consultation with other appropriate Federal agencies, to develop electronic procedures enabling PHAs to access income determinations for other Federal means-tested programs. Section 102(c) amends section 3(b) of the 1937 Act to change the definitions, for the public housing and Section 8 programs, of income and adjusted-income for each member of the household who is 18 years or older and unearned income for each dependent who is less than 18 years old. Section 102(d) amends section 8(o) of the 1937 Act, which authorizes the HCV Program, but existing HUD regulations already reflect the changes. Section 102(e) changes the definition of ''income'' to ''annual adjusted income'' for the Enhanced Voucher Program. Section 102(f) strikes the last sentence of paragraph (3) of section 8(c) of the 1937 Act, eliminating the requirement that reviews of family income shall be made no less frequently than annually for project-based housing. Under section 102(h), statutory amendments based on changes in section 102 are not effective until the beginning of the calendar year after HUD has issued a notice or regulation implementing the changes.

Some provisions in section 102 of HOTMA do not require regulatory changes and are not addressed in this proposed rule. Section 102(b) requires HUD to submit a certification letter to Congress regarding hardship exemptions to minimum monthly rent and does not amend the 1937 Act or prompt changes to HUD regulations. Section 102(g)(1) states that HUD may make appropriate adjustments in the formula income of PHAs that experience a material and disproportionate reduction in rental income during the first year in which the provisions of this section are implemented. 24 CFR 990.110(c) currently provides that HUD will address secondary elements that will be used in the revised Operating Fund Formula through nonregulatory means, so this provision does not require a regulatory change. Section 102(g)(2) requires that HUD submit a report to Congress identifying and calculating the impact of changes made by sections 102 and 104 of HOTMA during each of the first 2 years after the

implementation of section 102. Section 102(i) requires HUD to conduct a study on the impact any decreased amount of deductions in income that result from the implementation of this section has on elderly and disabled families.

*B. HOTMA Section 103*

Section 103 of HOTMA amends section 16(a) of the 1937 Act to place an income limitation on a public housing tenancy for families. The law requires that after a family's income has exceeded 120 percent of the area median income (AMI) (or a different limitation established by HUD) for 2 consecutive years, a PHA must terminate the family's tenancy within 6 months after the expiration of the 2-year period or charge the family a monthly rent equal to the greater of (1) the applicable Fair Market Rent or (2) the amount of monthly subsidy for the unit, including amounts from the operating and capital fund, as determined by regulations. For purposes of this proposed rule, the income limit established by HOTMA will be referred to as the ''over-income limit.'' A PHA must notify a family of the potential changes to monthly rent 1 year after the PHA determines that the family's income exceeds the over-income limit. Pursuant to section 3(a)(5) of the 1937 Act, the over-income limit does not apply in instances where a PHA operating fewer than 250 public housing units has admitted families with income exceeding the over-income limit, if the PHA is renting to those families because there are no income-eligible families on the PHA's waiting list or applying for public housing assistance. Each PHA must submit a report annually to HUD that specifies, as of the end of the year, the number of families residing in public housing with incomes exceeding the over-income limit and the number of families on the waiting lists for admission to public housing projects. Such reports must be publicly available.

The new language in section 16(a)(5) of the 1937 Act sets the over-income limit at 120 percent of the AMI. However, HUD can adjust the over-income limit if the Secretary determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. On July 26, 2018, at 83 FR 35490, HUD published a final notice in the **Federal Register** implementing HUD's methodology for determining the over-income limit by using the very low-income (VLI) [1] level for the applicable area as the baseline and multiplying it by 2.4. Because VLI is preliminarily calculated as 50 percent of the estimated area median income for the family, in most cases this would result in a figure matching 120 percent of the area median income. However, in areas where the VLI has been adjusted to account for high or low housing costs or to prevent it from being lower than 50 percent of the state, non-metro median family income, the final amount would result in an adjusted over-income limit as well.

*C. HOTMA Section 104*

Section 104 of HOTMA amends section 16 of the 1937 Act to set limits on the assets that families residing in public housing and families receiving assistance under section 8 of the 1937 Act may own. In addition to providing limitations on assets, this section defines the term ''net family assets'' and lists exclusions to the definition. The section allows for families to self-certify that they are not subject to the limitation on assets, under certain circumstances. Section 104 also grants PHAs and owners authority to not enforce the asset limitation, provided that the PHA or owner sets forth a policy to that effect in its PHA plan or in a plan adopted by the owner. Section 104 also directs HUD to direct PHAs to require all applicants and recipients under the 1937 Act to authorize the PHA to obtain financial information needed in connection with a determination with respect to eligibility.

## II. This Proposed Rule

*A. Affected Programs and Housing Providers*

HUD proposes to revise 24 CFR parts 5, 92, 93, 574, 960, and 982 in order to implement sections 102, 103, and 104 of HOTMA. Although sections 102, 103, and 104 amend the 1937 Act, which governs HUD's public housing and Section 8 programs, this proposed rule also aligns policies and procedures across program offices, where appropriate, to include programs that are administered by HUD's Office of Community Planning and Development, including the HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), and Housing Opportunities for Persons With AIDS (HOPWA) programs. Alignment will reduce disparities between the programs and better simplify program administration for HUD grantees that manage multiple programs.

*B. HOTMA Section 102*

Section 102 of HOTMA revises the definition in the 1937 Act of family income. Because a variety of programs use this definition, HUD offers the following chart showing which programs (other than public housing and the voucher programs) are affected by various changes to the income regulatory provisions in 24 CFR part 5:

| | PBRA | HOPWA (part 574) | HOME (part 92) | Housing trust fund (part 93) | 202/811 |
|---|---|---|---|---|---|
| Net Family Assets Definition (5.603). | Yes (§ 983.4) | Yes, except the value of a home of a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other homeownership assistance eligible under HOPWA is excluded (§ 574.310(f)(1)). | Yes, or may use IRS income definition (§ 92.203(b)(1)). | Yes, or may use IRS income definition (§ 93.151(b)(1)(i)). | Yes, or may use IRS income definition (§ 891.105). |
| Annual Income Definition (5.609(a)). | Yes (§ 983.4) | Yes (§ 574.310(d)(1)) | Yes (§ 92.203(b)(1)) | Yes (§ 93.151(b)(1)(i)) | Yes (§ 891.105). |
| Annual Income Exclusions (5.609(b)). | Yes (§ 983.4) | Yes (§ 574.310(d)(1)) | Yes (§ 92.203(b)(1)) | Yes (§ 93.151(b)(1)(i)) | Yes (§ 891.105). |
| Annual Income Calculation & Reexaminations (5.609(c)). | Yes (§ 983.4) | Yes (§ 574.310(d)(1)) | No | No | Yes (§ 891.105). |

[1] HUD's income limits were developed by HUD's Office of Policy Development and Research and are updated annually. Information about HUD's income limits and HUD's methodology for adjusting income limits as part of the income limit calculation can be found at *https://www.huduser.gov/portal/datasets/il.html.*

| | PBRA | HOPWA (part 574) | HOME (part 92) | Housing trust fund (part 93) | 202/811 |
|---|---|---|---|---|---|
| Adjusted Income Mandatory Deductions (5.611(a)). | Yes (§ 983.4) | Yes (§ 574.310(d)(1)) | Yes (§ 92.203(e)) | Yes (§ 93.151(e)(1)) | Yes (§ 891.105). |
| Adjusted Income Additional Deductions (5.611(b)). | Yes, ONLY when the PHA is an owner (§ 983.4). | Yes (§ 574.310(d)(1)) | Yes, in PBRA units or when tenant receives Section 8 voucher assistance (§ 92.203(e)(3)). | Yes, in PBRA and public housing units or when tenant receives Section 8 voucher assistance (§ 93.151(e)(2)). | No. |
| Adjusted Income Financial Hardship Exemptions (5.611(c)). | Yes (§ 983.4) | Yes (§ 574.310(d)(1)) | Yes, if the grantee elects to do so in PBRA units or when tenant receives Section 8 voucher assistance (§ 92.203(e)(3)). | Yes, if the grantee elects to do so in PBRA and public housing units or when tenant receives Section 8 voucher assistance (§ 93.151(e)(2)). | No. |
| Asset restriction (5.618) | Yes (§ 5.618(e)) | Yes, except for the provision of short-term mortgage or utility assistance or other homeownership assistance eligible under the HOPWA program, housing information services, or supportive services (§ 574.310(f)). | No | No | No. |

*Specific solicitation of comment 1:* What administrative burdens or other considerations (particularly related to Rental Assistance Demonstration conversions) should HUD be aware of in relation to certain sections applying to public housing and the HCV and project-based voucher (PBV) programs, but not to project-based rental assistance (PBRA) and Section 202/811?

1. Income Reexaminations

Section 102(a)(1) of HOTMA revises the process by which PHAs and owners are required to review family income. To conform to these changes, this rule proposes to revise 24 CFR 5.657, 24 CFR 960.257, and 24 CFR 982.516 for the Section 8 PBRA programs, public housing, and the HCV program (including PBV). Currently, these program regulations provide that families may request an interim reexamination of family income because of any changes since the last examination, and the PHA or owner must make the interim determination within a reasonable period of time after the family's request. HOTMA provides that reviews of family income shall be made upon the request of the family at any time the income or deductions of the family change by an amount that is estimated to result in a decrease of 10 percent or more in annual adjusted income, or of such lower amount as HUD may establish or permit the PHA or owner to establish. This proposed rule would revise §§ 5.657, 960.257, and 982.516 to state that the owner or PHA may decline to process a family's request for an interim reexamination if the owner or PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income. The proposed rule further provides that the owner or PHA may still choose to process the family request for an interim reexamination if the owner or PHA estimates the family's adjusted income will decrease by less than 10 percent, provided the owner or PHA has established a standard for conducting the interim reexamination that is more generous to the family (*e.g.,* the owner or PHA will conduct an interim reexamination if the decrease in family income exceeds 5 percent of adjusted income) and the PHA estimates the family's adjusted income will decrease by an amount that exceeds the owner or PHA threshold. HUD believes that while the 10 percent standard is appropriate as the HUD standard and consequently is not exercising its discretion to establish a lower threshold, owners and PHAs should have the flexibility to establish a lower threshold if they wish to do so and are willing to take on the additional administrative burden. The owner or PHA may not establish an alternative threshold that is less generous to the family than the standard 10 percent decrease in adjusted income (*e.g.,* the owner or PHA will only conduct an interim examination if the decrease in family adjusted income is estimated to be more than 20 percent decrease in adjusted income).

Additionally, HOTMA states that PHAs and owners must conduct a reexamination of family income at any time the family's adjusted income is estimated to have increased by 10 percent or more. This proposed rule would revise §§ 5.657, 960.257, and 982.516 to reflect this change and would specify that the owner or PHA would be required to conduct the reexamination within a reasonable period of time after the owner or PHA becomes aware of the family's change in income. HOTMA provides some administrative relief to this requirement by allowing PHAs or owners to elect not to conduct an income review in the last 3 months of a certification period, and that flexibility is incorporated into this proposed rule. PHAs or owners may not consider earned income of the family when estimating whether the family's adjusted income has increased, unless the increases in earned income correspond to previous decreases resulting from the family's request for an interim reexamination. This proposed rule would provide a definition for ''earned income'' in 24 CFR 5.100 that would apply when the term is used throughout this rule. The definition would mirror the definition of earned income that is currently in 24 CFR 984.103.

*Specific solicitation of comment 2:* HUD is specifically seeking comment about the ''reasonable period of time'' in which the PHA and owner must conduct an interim reexamination. HUD seeks comment on what should be considered reasonable and whether this rule should contain a specific time frame by which the PHA or owner must complete an interim reexamination. HUD seeks comment on what such a time frame might be (for example, 2 weeks from the time of the family request, or the time the PHA or owner is aware of the change in income or family composition).

*Specific solicitation of comment 3:* HUD is seeking comments on whether HUD should continue to require PHAs and owners to use the Enterprise Income Verification (EIV) System for every income examination, or revise its regulations at 24 CFR 5.233 to require use of EIV only at initial and annual reexaminations and not at interim reexaminations. If HUD were to adopt such a proposal, housing providers could still use EIV for interim reexaminations but would not be required to use EIV. HUD is seeking comments on whether such a proposal would save time for PHAs and owners without significantly impacting the accuracy of the reexaminations.

2. Calculation of Family Income

Section 102(a)(1) of HOTMA also describes how PHAs and owners must calculate family income, and this proposed rule would revise 24 CFR 5.609 to account for this. Specifically, this proposed rule would revise § 5.609 to direct PHAs and owners to estimate the income of the family for the upcoming year to determine family income for initial occupancy or for the initial provision of housing assistance or for an interim reexamination of family income. In determining family income for annual reviews, this proposed rule would provide that the PHA or owner must use the income of the family as determined by the PHA or owner for the preceding year, taking into account any redetermination of income undertaken during the preceding year. For example, if a PHA had made a redetermination of the family's income during the preceding year because the family's income had decreased by more than 10 percent, the PHA would be required at the annual review to use that redetermination to determine the family's income for the forthcoming year. This will not apply in situations where the PHA or owner uses a streamlined income determination. HOTMA provides that the PHA or owner may make adjustments, as it considers appropriate, to reflect current income if during the previous 12-month period there was a change in income that was not accounted for in a redetermination of income. However, in order to properly account for income, this rule proposes that the PHA or owner must make adjustments to reflect current income if during the previous 12-month period there was a change in income that was not accounted for in a redetermination of income. For example, if a family reported a decrease in income during the preceding year but the PHA had not conducted an interim redetermination because the decrease was less than 10 percent of the family's annual adjusted income, at the annual review the PHA would be required to adjust the determination of family income to reflect the decrease.

HOTMA provides for a ''safe harbor'' for PHAs or owners who determine family income prior to the application of deductions based on timely income determinations made for purposes of other means-tested Federal public assistance programs, including the Temporary Assistance for Needy Families block grant, Medicaid assistance, and the Supplemental Nutrition Assistance program. This proposed rule adopts this language in the new paragraph on calculation of income in 24 CFR 5.609. Specifically, HUD is permitting PHAs and owners to utilize the income determinations, regardless of definitional differences between other forms of public assistance and the respective HUD program. HUD believes this maximizes the streamlining benefit of the provision. Further, HUD proposes to add the Earned Income Tax Credit to the list of means-tested Federal public assistance.

*Specific solicitation of comment 4:* HUD is soliciting feedback on how allowing PHAs and owners to use income determinations from other forms of public assistance may impact program administration, and whether HUD should establish requirements as to which income determination should be used if there is more than one determination of income from other public assistance programs available to the PHA or owner.

*Specific solicitation of comment 5:* HUD is soliciting feedback on whether there are other forms of Federal public assistance that should be added to the ''safe harbor'' list or whether HUD should limit the number of such programs.

3. Annualization of Income

In order to conform to HOTMA, this proposed rule would also remove an existing provision in 24 CFR 5.609 on annualization of income, which states that if it is not feasible to anticipate a level of income over a 12-month period (*e.g.,* seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

4. De Minimis Errors

HOTMA provides that a PHA or owner will not be out of compliance with the statute's new provisions regarding income review and income calculation solely due to any de minimis errors made by the agency or owner in calculating family income. HOTMA does not define *de minimis* error. HUD proposes to revise 24 CFR 5.609, 24 CFR 5.657, 24 CFR 960.257, and 24 CFR 982.516 to provide that PHAs and owners will not be considered to have failed to comply with the requirements involving the calculation of income solely due to de minimis errors. Under this proposed rule, a de minimis error would be defined as any error where the PHA's or owner's calculation of a family's income or adjusted income varies from the correct income or adjusted income by no more than 5 percent. In such instance, the PHA's or owner's income determination would not be considered incorrect for purposes of HUD's monitoring and compliance oversight responsibilities. However, the PHA or owner would still be required to take necessary corrective action to repay a family if the de minimis error in the income determination resulted in the family being overcharged for their rent.

*Specific solicitation of comment 6:* HUD specifically seeks comment from PHAs and owners on the methodology HUD should use in determining what constitutes a de minimis error. For example, as alternatives to the 5 percent figure discussed above, HUD could calculate de minimis errors to be those that do not exceed $30 per month for any family, because a family's share of rent for 1937 Act programs is approximately $30 for every $100 of income. Or, HUD could calculate de minimis errors as those that represent less than 5 percent of all income determinations made during a calendar year.

5. Earned Income Disallowance

Section 102(a)(2) of HOTMA eliminates section 3(d) of the 1937 Act, which had thus far allowed for the disallowance of earned income (EID) from rent determinations. This section had provided that the rent of certain public housing residents or recipients of Section 8 assistance could not be increased as a result of increased income due to employment during the 12-month period beginning on the date on which the employment started, and that following the expiration of that 12-month period, the PHA must exclude from the annual income of a qualified family at least 50 percent of any increase in the income of such family member, as a result of employment, over the family's baseline income for the subsequent 12-month period. Other HUD programs, including the HOME, HOPWA, and Supportive Housing

programs, similarly adopted an EID for persons with disabilities. Because the EID is no longer authorized under the 1937 Act, this proposed rule would eventually eliminate regulatory references to it.

Despite the elimination of the EID from HUD's regulations, HUD proposes to allow families who receive the EID benefit as of the effective date of a final rule implementing section 102 of HOTMA to continue receiving the benefits of EID until the allowed time frame expires, per the framework currently provided under § 5.617 or § 960.255. Given the time frames in § 5.617 or § 960.255, within 2 years from the effective date of a final rule implementing the elimination of EID, no family would receive the EID benefit.

*Specific solicitation of comment 7:* HUD specifically solicits comment on this proposal to allow current recipients of the EID benefit to continue to receive the benefit until the allowed time frame expires.

6. Definition of ''Annual Income''

Section 102(c) of HOTMA provides a new definition for the term ''income.'' As a result, this proposed rule would significantly revise HUD regulations in 24 CFR 5.609. Specifically, this rule proposes to simplify the existing definition of annual income by removing the list of examples of income sources and providing a broader definition of income that mirrors the definition of income provided by HOTMA. HUD hopes that this streamlining effort will reduce the burden on PHAs and owners in determining a family's income and reduce confusion about what should be included as income.

This HOTMA definition sufficiently encompasses what HUD considers to be income under the current regulation, with the exception of the treatment of imputed returns on assets. Therefore, in addition to the HOTMA definition of income, this proposed rule would specify that annual income also includes the imputed return on assets over $50,000, based on the current passbook savings rate if the actual income from assets cannot be computed. The $50,000 figure will be adjusted for inflation, in accordance with HOTMA. By simplifying the definition of income and streamlining the regulatory provisions in § 5.609, HUD seeks to reduce the complexity of the existing income regulations.

HUD wants to be clear that income sources that were previously included in annual income are generally unchanged. HUD is only simplifying the definition to eliminate confusing regulatory language that excluded some income that should have been included and which increased litigation risk for housing providers who rely on HUD's definition of income.

*Specific solicitation of comment 8:* HUD is seeking feedback from interested parties on the impact of the proposed redefinition of annual income and whether it simplifies the understanding of what is included in annual income.

*Specific solicitation of comment 9:* HUD solicits comment on what inflationary index to use for purposes of adjusting the amount of imputed return on assets included in annual income, and other provisions in HOTMA that require amounts to be adjusted annually for inflation.

7. Income Exclusions

Additionally, HUD proposes updating the list of income exclusions to be consistent with HOTMA and to eliminate certain nonstatutory, discretionary exclusions from income in order to further streamline the income determination process. This proposed rule specifies that annual income does not include amounts that are explicitly excluded from the definition of income in HOTMA, but removes current exclusions for inheritances, capital gains, gifts, and other sporadic income. HUD has found that these provisions have caused confusion, there has been inconsistent application of these exclusions, and that these amounts should be included as annual income. HUD notes that with this change, realized capital gains—meaning those capital gains obtained from the sale of property in a given year—would be included as income under 24 CFR 5.609(a)(1). The value of unrealized capital gains—meaning the value of any increase in an asset from one year to the next—would be included under the definition of Net Family Assets, which is used to determine imputed income under 24 CFR 5.609(a)(2).

Under this proposed rule, insurance payments remain excluded from annual income. However, HUD would strike the parentheses and the text enclosed in the parentheses that is intended to clarify that insurance payments include payments under health and accident insurance and worker's compensation. This proposed change does not represent any change in policy and payments under health and accident insurance and worker's compensation would continue to be excluded from annual income. HUD is proposing the change because HUD believes the current language has created more confusion in terms of what is meant by insurance payments than it has solved and to clarify that all insurance payments should be excluded from annual income, not just a select, few types.

*Specific solicitation of comment 10:* The proposed rule provides that distributions from a nonrevocable trust fund specifically provided to cover the cost of medical expenses for a minor is excluded income, as are any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty, owed to a family member arising out of law, that resulted in a member of the family being disabled. Distributions from a non-revocable trust fund provided for other purposes would be considered income. HUD is seeking comment on whether this rule should treat subsequent withdrawals of an insurance payment or settlement for personal or property losses (whether related to a minor or not), or amounts recovered in the aforementioned civil action or settlement, as income. Start here For example, while the initial lump sum addition of an insurance payment or an amount recovered in the civil action or settlement would not count as annual income, HUD seeks comment on whether this rule should specify that any amount the family subsequently withdraws against the payment (*e.g.,* from a bank account or trust fund into which the insurance payment or recovered amount was deposited) would be considered income. If this rule were to consider such subsequent withdrawals as income, HUD seeks comment on whether certain types of withdrawals should be excluded from annual income (in addition to the existing exclusion of distributions from a non-revocable trust fund specifically provided to cover the medical expenses of a minor). If the rule were to consider such subsequent withdrawals as income but exclude certain withdrawals that are used for a particular purpose (*e.g.,* the family received an auto insurance payment after an accident that totaled the family car that the family deposited in their checking account and then subsequently used to purchase a replacement vehicle), HUD seeks comment on whether there are specific requirements that could be added to address the operational challenges that a PHA or owner would face in identifying, determining, and verifying that the withdrawal should be either included or excluded from annual income. Finally, HUD is requesting comment on whether the final rule should simply count the lump-sum insurance payment or settlement as

income, rather than excluding it from annual income at any point in time.

HOTMA provides HUD the discretion to establish exclusions to income beyond those explicitly listed in HOTMA and any amount required by Federal law to be excluded from consideration as income. As a result, with the exception of inheritances, capital gains, gifts, and other sporadic income, HUD proposes to maintain the other exclusions currently listed in § 5.609, but would revise the explanatory language for some of those exclusions to provide greater clarity and understanding. One of these exclusions is for earnings in excess of $480 for full-time students 18 years or older who are not the head of household or spouse of the head of household. This proposed rule would effectively maintain that exclusion, but provide that the $480 figure be adjusted annually for inflation. As explained below, this is because there is a mandatory $480 deduction for dependents in the current regulations that HOTMA requires be adjusted for inflation, so the end result is that all earned income of dependent students should either be excluded or deducted from income. Additionally, this proposed rule would provide that the amount of the existing exclusion for adoption assistance payments, which is payments in excess of $480 per adopted child, would also be adjusted annually for inflation.

This proposed rule would add additional exclusions to income in order to conform with HUD policy. This proposed rule would provide that amounts in or from ABLE accounts created under section 529A of the Internal Revenue Code (IRC) are excluded from income. ABLE accounts are tax-advantaged savings accounts for individuals with disabilities. This proposed rule would exclude the income of foster adults from consideration of family income in order to prevent disincentives to housing such persons, and would codify HUD's existing policy that state kinship or guardianship care payments are excluded from the definition of income. Additionally, this proposed rule would specify that loan proceeds (for example, car loans or payday loans) must be excluded from income. Loan proceeds are not considered income by HUD because they are typically a pass-through payment for the purpose of purchasing something like a car. In the case of a payday loan, a family uses a paycheck as collateral, thus counting such a loan as income would effectively count that income amount twice.

This proposed rule would also add an exclusion for payments received by Indian persons as a result of claims relating to the mismanagement of assets held in trust by the United States (including payments from tribal trust settlements), to the extent such payments are also excluded from gross income under the Internal Revenue Code. HUD already consider such payments to be excluded from annual income, but relies on the current exclusion for temporary, nonrecurring, or sporadic income to do so, which this proposed rule would remove.

Finally, the rule would codify long-standing practice of excluding from annual income replacement housing ''gap'' payments that offset increased rent and utility costs to families that are displaced from one federally subsidized housing unit and move into another federally subsidized housing unit. HUD currently excludes these payments from income as ''temporary, nonrecurring, or sporadic income'' under § 5.609(c)(9). This rule preserves the gap payment exclusion and clarifies that this exclusion only exists to the extent that the tenant's out of pocket expenses for rent and utilities in their new federally subsidized housing are higher than they were in their previous federally subsidized housing. Later changes to a tenant's contribution due solely to changes in family income, size, or composition should not be considered when determining if a gap has been reduced or eliminated. If the gap is reduced or eliminated because of reasons such as a subsequent move by the tenant or change in the subsidy program applicable to the tenant's unit, and the tenant chooses to retain or continue to receive their replacement housing ''gap'' payment, then the portion of the ''gap'' payment that is no longer needed to close the gap should be counted as income for purposes of determining annual income under § 5.609.

HOTMA provides an income exclusion for full-time dependent students for any grant-in-aid or scholarship amounts used for the costs of tuition or books, and, in such amounts as HUD may allow, for the cost of room and board. In implementing this provision and as part of this proposed rule's objective to simplify income determinations, HUD proposes to combine the student financial assistance requirements under a new 24 CFR 5.609(b)(9) (currently, student financial assistance exclusion requirements are found at § 5.609(b)(9) and at § 5.609(c)(6)). The proposed rule provides in general that the full amount of student financial assistance paid directly to the student or to the education institution on the student's behalf is excluded from annual income. The rule defines financial assistance to be any grant-in-aid, scholarship, or other assistance amounts an individual receives for the costs of tuition, books, room and board, and other fees charged to the student by the education institution.

Since 2005, HUD's Appropriations Acts have placed limits on the amount of financial assistance that is excluded from income for students applying for and receiving Section 8 assistance who are not over the age of 23 with dependent children. In accordance with that statutory restriction, this proposed rule would provide that, for those students, the financial assistance in excess of the cost of tuition and any other required fees and charges under the Higher Education Act of 1965, from private sources, or an institution of higher education, shall be considered income. This categorization of funds as income does not apply to public housing students, students under other HUD programs, or to Section 8 students over the age of 23 with dependent children, for whom the financial assistance in excess of the cost of tuition the individual receives for the cost of books, room and board, and other fees charged by the education institution is excluded from annual income (in addition to the financial assistance that covers the student's tuition).

HOTMA also provides an income exclusion for any amount in or from, or any benefits from, any Coverdell educational savings account of or any qualified tuition program under section 530 and section 529 of the Internal Revenue Code of 1986, respectively. The proposed rule covers these HOTMA income exclusions under a new § 5.609(b)(10).

Additionally, HOTMA provides an exclusion for payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance, and this proposed rule would include this exclusion.

*Specific solicitation of comment 11:* HUD is soliciting feedback about whether there are other income exclusions that should be provided for in this rulemaking. For example, deferred disability benefits are excluded from income under HOTMA and this proposed rule, but the rule could provide for exclusions from income for all veteran's disability benefits.

8. Adjusted Income

Section 102(c) of HOTMA makes changes to ''adjusted income'' that require revisions to 24 CFR 5.611. Section 5.611 currently provides for a mandatory deduction of $480 for each

dependent. HOTMA provides for a mandatory deduction of $480 for minors, students, and persons with disabilities who are not the head of the household or that person's spouse, and provides that this figure be adjusted annually for inflation and the actual deduction should be determined for each year by rounding such amount to the next lowest multiple of $25. HOTMA also provides HUD the discretion to establish deductions in addition to those listed in HOTMA. As a result, HUD proposes to maintain the $480 deduction for each dependent, which amount will be annually adjusted for inflation. In line with HOTMA's requirement, this rule would also increase the deduction for any elderly or disabled family from the current $400 to $525, which amount will be annually adjusted for inflation and rounded to the next lowest multiple of $25.

This proposed rule would maintain other deductions currently allowed, such as those for child care and health and medical expenses. However, to conform to section 102(c) of HOTMA, this proposed rule would revise the deduction for health and medical expenses. Currently, this deduction is for the sum of (i) unreimbursed medical expenses of any elderly family, and (ii) the unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family to be employed. The deduction is currently limited to the amount by which these total expenses exceed three percent of the family's income. HOTMA increases the health and medical expense threshold from three percent to 10 percent. In other words, the health and medical expense deduction is now limited to the amount by which those expenses exceed 10 percent of the family's annual income. This means families who receive a health and medical expense deduction at the time the HOTMA change is implemented may see a significant increase in their non-deductible health and medical expenses, which could result in an increase in their adjusted income and their rent. However, HUD notes that the reduction in the family's health and medical expense deduction may be offset to some degree by the HOTMA change that increases the deduction for elderly and disabled families from $400 to $525.

Section 102(c) provides that the Secretary shall by regulation provide hardship exemptions to the requirements of the health and medical expenses provision for impacted families who demonstrate an inability to pay calculated rents because of financial hardship, and that the regulations must include a requirement to notify tenants of any changes to determination of adjusted income based on the determination of the family's claim of financial hardship. In order to implement this provision, this proposed rule would provide, that if the family can demonstrate an inability to pay the new rent and the PHA or owner determines that the family's inability is the result of the change in the medical expense deduction (*i.e.,* the increase in the amount of non-deductible expenses from 3 to 10 percent of family income), the PHA or owner would be required to recalculate the family's adjusted income. In recalculating the family's adjusted income, the PHA or owner would deduct the amount of eligible health and medical expenses that exceeds 6.5 percent of the family's annual income instead of the normally applicable 10 percent of family's annual income. HUD proposes a 6.5 percent threshold because it is half-way between the pre-HOTMA health and medical expense threshold of three percent and the new statutory 10 percent threshold. Under this proposed rule, the family's hardship exemption would expire at the family's next regular income reexamination or at such time that the PHA or owner determines the family can pay their rent under the normal adjusted income calculation, whichever comes first. The PHA or owner would be required to notify the family in writing of the change in the determination of adjusted income, the family's rent resulting from the hardship exemption, and when the hardship exemption will expire. The intent of the proposed regulation is to allow families receiving hardship exemptions to transition to their new adjusted income and higher rent incrementally, rather than immediately absorbing the full increase as a result of the medical expense deduction change.

Section 102(c) also allows a hardship exemption for the child care expense deduction, which provides that any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education is deducted from annual income. Under this proposed rule, a hardship exemption would be provided to allow the deduction for reasonable child care costs to continue in certain circumstances for a family that no longer has a member that is employed or seeking to further his or her education. In order to qualify for the hardship exemption, the family would be required to demonstrate to the satisfaction of the PHA or owner that their inability to pay the increased rent is due to the loss of the child care deduction. In addition, the family would also have to demonstrate why the child care expense remains necessary now that no family member is employed, actively seeking employment, or furthering his or her education. For example, the family member may have had to temporarily suspend their educational pursuits as the result of injury or illness, and due to the injury or illness they are unable to be the primary full-time care giver for the child whose child care expenses were deducted from the family's adjusted income. Under this proposed rule, if the PHA or owner determines that the family qualifies for the hardship exemption, the PHA or owner would be required to recalculate the family's adjusted income and continue to include the deduction for the reasonable child care expenses. As is the case with the health and medical expense hardship exemption, the child care expense hardship exemption would be temporary and would end no later than the family's next regular reexamination. The child care hardship exemption would also end at any point in time that the PHA or owner determines that the family is either able to pay the rent without the child care expense deduction or the need for the child care expense no longer exists.

The PHA or owner would be required to notify the family in writing of the change in the determination of adjusted income and the family's rent for both the adjusted medical expense deduction and the continuation of the child care deduction hardship exemptions. The notice would also inform the family of the temporary nature of the hardship exemption and that the exemption will expire at the earlier of the family's next regular income reexamination or at such time the PHA or owner determines the need for the hardship exemption no longer exists.

*Specific solicitation of comment 12:* HUD is soliciting feedback from affected parties on the proposed implementation of the hardship exemption for both the health and medical expenses deduction and child care deduction. Specifically, HUD is soliciting comments on whether there are better approaches to implementing the hardship exemptions than what is proposed in this rule, whether HUD should establish specific requirements or parameters as to how the PHA or owner would determine that the family is unable to pay the rent (for example, the percentage of the family's income paid for rent and health and medical expenses exceeds a certain

percentage), or whether PHAs and owners should be given broad administrative discretion to establish their own policies on how to make this determination.

HUD's current regulations provide that for public housing, PHAs may adopt additional deductions from annual income. Under HOTMA, PHAs may also choose to adopt additional deductions from income for the voucher programs, and the Section 8 project-based rental assistance program (where the PHA is an owner) in addition to public housing. As such, this proposed rule would provide that for public housing and the voucher programs, and where the PHA is an owner in the Section 8 project-based rental assistance program, PHAs may adopt additional deductions from annual income. Additionally, HOTMA requires that HUD establish procedures to ensure that any deductions adopted by PHAs do not materially increase Federal expenditures. Under this proposed rule, PHAs that adopt permissive deductions would not be eligible to receive any program funding to cover the increased cost to the impacted program. The rule provides that the PHA would have to identify the amount of subsidy provided on behalf of the family that is attributable to the permissive deduction as required by HUD. This information would then be used by HUD to ensure that the cost of the permissive deduction is not included in the subsidy for the public housing program, renewal funding for the HCV (including PBV) program, or the housing assistance payments provided to the PHA under the Section 8 project-based programs.

*Specific solicitation of comment 13:* HUD is soliciting feedback on whether the proposed implementation of permissive deductions (*i.e.,* that a PHA will not be eligible for additional subsidy to cover the costs associated with the deduction) has any unintended consequences, or whether HUD should define ''material'' differently. Further, HUD is soliciting feedback on whether the permissive deductions could be used to provide incentives for employment. For example, HUD could permit PHAs to be eligible for additional subsidy for certain permissive deductions of earned income (*e.g.,* permissive deductions of the first $1,000 or $5,000 of earned income) or other work-related income.

*C. HOTMA Section 103*

This proposed rule would create a new 24 CFR 960.507 in HUD's regulations to implement section 103 of HOTMA. Section 103 of HOTMA places an income limitation on a public housing tenancy for families at 120 percent of the AMI. However, HUD can adjust the over-income limit if HUD determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. This proposed rule would provide that the over-income limit is determined by using the very low-income (VLI) level for the applicable area as the baseline and multiplying it by 2.4. Pursuant to section 3(a)(5) of the 1937 Act, the over-income limit does not apply in instances where a PHA operating fewer than 250 public housing units has admitted families with income exceeding the over-income limit, if the PHA is renting to those families because there are no income-eligible families on the PHA's waiting list or applying for public housing assistance. To conform to HOTMA, this proposed rule would also remove existing 24 CFR 960.261 from HUD's regulations, which provides that PHAs may not evict or terminate the tenancy of a family that is over the income limit for public housing if the family is participating in the Family Self-Sufficiency program, or if it currently receives the earned income disallowance.

Following section 16(a)(5) of the 1937 Act, this proposed rule would provide in § 960.507 that when a PHA becomes aware, through an annual reexamination or an interim reexamination of an increase in income, that if a family's income exceeds the over-income limit, the PHA must document that the family exceeds the threshold. This would be used to compare the family's current income with the family's income one year later. Once found to be over-income, the family's income would be reviewed one year later even if they have chosen to pay the flat rent. This proposed rule would also revise § 960.253(f) to conform to the new requirements of section 103 by providing that for families that choose to pay a flat rent, once a family is determined to be over-income, the PHA must follow the documentation and reexaminations requirements in § 960.507(c).

Under proposed § 960.507, if the family's income continues to exceed the new over-income limit one year after the initial determination by the PHA, the PHA must, as required by section 16(a)(5) of the 1937 Act, provide written notification to the family that their income has exceeded the over-income limit for one year. If the family's income continues to exceed the over-income limit for the next 12 consecutive months, the family would be subject to either a higher rent or termination based on the PHA's policies. If, however, a PHA discovers through an annual or interim reexamination that a previously over-income family has income that is now below the over-income limit, the family would no longer be subject to these provisions. The family would be entitled to a new two-year grace period if the family's income once again exceeds the over-income limit.

As reflected in this proposed rule, HOTMA requires that after a family's income has exceeded the over-income limit for two consecutive years, a PHA must terminate the family's tenancy within 6 months after the expiration of the two-year period or charge the family a monthly rent equal to the greater of: (1) The applicable Fair Market Rent (FMR); or (2) the amount of monthly subsidy for the unit including amounts from the operating and capital fund, as determined by regulations. To calculate the monthly subsidy for a unit, HUD would define the monthly amount of Public Housing Capital and Operating funds as the per unit subsidy amount provided to a PHA for the development in which the family resides for the most recent year for which HUD has calculated final eligibility. HUD would publish such funding amounts annually. PHAs would continue to charge these families the non-over-income rent amount (the family's choice of income-based or flat rent) for the time period during the 6-month period before termination.

HUD notes that PHAs are required to establish policies for continued occupancy in public housing. Through the development of those policies, a PHA is able to consider specific circumstances in which they would provide for flexibility in the administration of over-income requirements, provided such policies are in compliance with the 1937 Act and all applicable fair housing requirements. PHAs are subject to, among other fair housing and civil rights authorities, Section 504 of the Rehabilitation Act (Section 504), the Fair Housing Act, and Title II of the Americans with Disabilities Act (ADA), which include, among other requirements, the obligation to grant reasonable accommodations that may be necessary for persons with disabilities.

HOTMA requires PHAs to submit an annual report that specifies the number of families in public housing with incomes exceeding the over-income limit and the number of families on the waiting lists for admission to public housing. Because the report data must reflect the numbers at the end of the calendar year, not at the end of a PHA's reporting year, and because not all

PHAs submit an annual plan, this report will be a separate report from other reporting requirements. However, HUD is developing a tool that will make it simple for PHAs to submit the relevant numbers and make those numbers public.

*D. HOTMA Section 104*

Section 104 of HOTMA establishes a limitation on the amount and type of assets that a family assisted under the public housing or Section 8 programs can possess. To conform to HOTMA, this proposed rule would create a new section 24 CFR 5.618 to HUD regulations that would restrict assistance to families based on assets.

1. Assets Restriction

The new § 5.618 would provide that families would be ineligible for assistance under HUD's public housing or Section 8 programs if their net family assets exceed $100,000. HOTMA requires that this amount be adjusted annually for inflation and, as discussed earlier in this preamble HUD solicits comment on the inflationary index that should be used.

2. Real Property

To conform to HOTMA, § 5.618 would also provide that families could not receive assistance if they have a present ownership interest in, legal right to reside in, and the effective legal authority to sell real property in the jurisdiction in which the property is located that is suitable for occupancy by the family as a residence. Under this proposed rule, families would have to demonstrate that in the jurisdiction in which the property is located they do not have a present ownership interest in, legal right to reside in, or the legal authority to sell the real property for the property to be excluded from net family assets. HUD proposes to exclude from the real property restriction any property that is jointly owned by a member of the family and another individual or individuals who would not reside with the family. HUD proposes this exclusion because an assisted family may not have the effective legal authority to sell such property in the jurisdiction in which the property is located, and depending on the nature of the property or type of joint ownership, may not be able to live in the property.

*Specific solicitation of comment 14:* HUD is soliciting comment about the circumstances under which a family may not have a present ownership interest in, legal right to reside in, or effective legal authority to sell real property in the jurisdiction in which the property is located, and the feasibility of families demonstrating this.

While HOTMA does not define what it means for a property to be suitable for occupancy, this proposed rule would provide that a property is suitable for occupancy unless that family can demonstrate that the property: (i) Does not meet the disability-related needs of the family, including meeting physical accessibility requirements; (ii) is not sufficient for the size of the family, for example, there are not enough bedrooms; (iii) that it is geographically located so as to provide a hardship for the family; and (iv) that it is not safe to reside in because of its physical condition.

HOTMA provides certain exclusions to the real property restriction. Particularly, this restriction would not apply to the following: (i) A manufactured home for which the family is receiving Section 8 tenant-based assistance; (ii) property for which a family receives homeownership assistance from a PHA; (iii) any person who is a victim of domestic violence; or (iv) to any family that is offering the property for sale. Under this proposed rule, in order to demonstrate that a family is offering property for sale, a PHA or owner could require that the family provide evidence that the property has been listed for sale. This proposed rule would add that the restriction in this section also does not apply to victims of dating violence, sexual assault, or stalking, and that the terms ''domestic violence,'' ''dating violence,'' ''sexual assault,'' and ''stalking'' are defined in HUD's regulations implementing the Violence Against Women Act (VAWA).

*Specific solicitation of comment 15:* HUD is soliciting feedback from the public on how the exemption for victims of domestic violence, dating violence, sexual assault, or stalking will be implemented and how it will operate.

To provide context for the references to real property in § 5.618, this proposed rule would provide a new definition in 24 CFR 5.100 for ''real property,'' specifying that ''real property'' has the same meaning as that provided under the state law in which the real property is located.

3. Self-Certification of Assets

In accordance with HOTMA, § 5.618 would also provide that the PHA or owner could determine the net assets of a family based on a certification by the family that their net family assets do not exceed $50,000 after annual adjustment for inflation. This proposed rule would also revise § 5.659 of the current regulations to reflect the requirement that families can self-certify. Similarly, § 5.618 would provide that the PHA or owner could determine that a family does not have any present ownership interest in any real property based on a certification by the family to that effect.

4. Discretion on Enforcing the Asset Limitation

This proposed rule would conform to HOTMA by providing that PHAs and owners have the discretion to choose not to enforce the limitation on eligibility based on assets, or may establish exceptions to the restrictions based on eligibility criteria, if the PHA or owner does so in the PHA plan or under a policy adopted by the owner.

In HOTMA and these regulations, eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. This proposed rule clarifies that these policies cannot violate fair housing statutes or regulations. This means that these policies cannot be implemented in a manner that discriminates against any protected classes.

HOTMA provides that PHAs and owners who choose to enforce the asset limitations may delay for a period of not more than 6 months the eviction or termination of a family that does not meet the limitation on assets. This proposed rule would clarify that it is the start of the eviction or termination proceedings that could not be delayed for more than 6 months.

5. Net Family Assets

This proposed rule would revise the definition of ''net family assets'' found in 24 CFR 5.603 to align it with the provisions in section 104 of HOTMA. The new regulatory definition would provide that the following will not be considered to be part of net family assets: (i) Equity in a manufactured home where the family receives Section 8 tenant-based assistance; (ii) equity in property for which a family receives HCV homeownership assistance from a PHA; (iii) Family Self-Sufficiency Accounts; (iv) the value of any accounts specifically dedicated for retirement; (v) real property for which the family does not have the effective legal authority necessary to sell such property; (vi) amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty that resulted in a member of the family being disabled; and (vii) the

value of any Coverdell education savings account or any qualified tuition program under section 529 of the IRC. HUD proposes to exclude from the definition of net family assets the value of any ABLE account created under section 529A of the IRC. Per section 104 of HOTMA, with respect to non-revocable trusts, the value of the trust would not be considered an asset to the family as long as the fund continues to be held in trust. Any income distribution from any trust would be considered income, except in the case of distributions from non-revocable trusts, made to cover the medical expenses for a minor. Additionally, this proposed rule would continue some of the current exclusions from net family assets, including interest in Indian trust land.

HOTMA provides that the term ''net family assets'' does not include the value of personal property, except for items of personal property of significant value, as the Secretary may establish. Therefore, this proposed rule would revise the existing exclusion in HUD's regulations for the value of necessary items of personal property, to provide that the exclusion would apply to items of personal property with a total value under $50,000, other than necessary items. HUD proposes to consider items valued over $50,000 to be those of ''significant value,'' given HOTMA's provision that families may certify that their net assets do not exceed $50,000.

*Specific solicitation of comment 16:* HUD specifically seeks comment on the proposal to exclude items of personal property valued $50,000 or less, other than necessary items, from the calculation of net family assets, and comments on what such necessary items of personal property might be. Examples might include a car that the family relies on for transportation, or medical equipment.

This proposed rule would make additional changes to the definition of net family assets for clarity. It would eliminate the current exclusion from net family assets for equity accounts in HUD homeownership programs, as this terminology is vague and unclear. As mentioned above, the new definition for net family assets would exclude equity in a manufactured home where the family receives Section 8 tenant-based assistance and equity in property for which a family receives homeownership assistance from a PHA.

6. Authorization for Financial Disclosures

Section 104 of HOTMA that states that HUD must require PHAs to require all applicants and recipients under the 1937 Act to authorize the PHA to obtain financial information needed in connection with a determination with respect to eligibility. Currently, 24 CFR 5.230 requires HUD assistance applicants and participants to sign a consent form that authorizes PHAs and owners to obtain information from certain sources in order to verify income. Further, 24 CFR 5.232 outlines that a refusal to sign the consent form would lead to termination. Following HOTMA's mandate, this proposed rule would amend § 5.230 to include a provision authorizing PHAs to obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (42 U.S.C. 1304), whenever the PHA determines the record is needed in connection with a determination of an assistance applicant's or participant's eligibility or level of benefits. Additionally, this section currently states the consent form must contain a statement that the authorization to release the information requested by the consent form expires 15 months after the date the consent form is signed. HOTMA section 104 requires that the authorization allowing PHAs to obtain financial records from financial institutions shall remain effective until the earliest of: The rendering of a final adverse decision for an assistance applicant; the cessation of a participant's eligibility for assistance from HUD and the PHA; or the express revocation by the assistance applicant or recipient (or applicable family member) of the authorization, in a written notification to HUD. In an effort to streamline program administration, this proposed rule would revise the section to align the current authorization consent timeline to the HOTMA timeline, thereby reducing annual burden on PHAs.

HOTMA provides PHAs with the discretion to determine whether applicants or recipients are ineligible for benefits if they, or their family members, refuse to provide or revoke the authorization to obtain financial records. Therefore, this proposed rule would also revise 24 CFR 5.232, which describes the penalties for failing to sign the consent form required in § 5.230, to clarify that the penalties in § 5.232 will not apply if applicants or participants or their family members revoke their consent for the PHA to access financial records, unless the PHA has established a policy in their annual plan that revocation of consent to access financial records will result in denial or termination of assistance or admission.

*E. CPD Program Changes*

As discussed earlier in this preamble, this proposed rule would make changes to regulations for HUD's HOME, HTF, and HOPWA programs in order to better align regulations pertaining to income and assets among different HUD programs. The HOME and HTF programs are federal block grant programs that provide annual grants to States and local governments to create decent, safe and affordable housing for low-income, very low-income, and extremely low-income families, including homeless individuals. In fiscal year 2018, HUD allocated over $1.6 billion to the States and localities nationwide to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. The HOME and HTF programs often operate in conjunction with other federal, state or local housing programs and leverage community and private equity in support of affordable housing. To make housing affordable, HOME and HTF funds are frequently combined with other HUD federal programs such as Project-Based Section 8 Rental Assistance and used as gap financing in rental housing developed with Low-Income Housing Tax Credits (LIHTC). Many of these programs require the use of the Part 5 definition of annual income and adjusted income for the purpose of determining income eligibility and/or tenant payments.

1. HOPWA

Section 859 of the AIDS Housing Opportunity Act (42 U.S.C. 12908) requires that HOPWA rental assistance ''be provided to the extent practicable in the manner'' of the Section 8 program. Therefore, HUD is proposing to incorporate into the HOPWA regulations in 24 CFR part 574 the procedures on income examinations and net family assets proposed for the public housing, HCV, and Section 8 project-based rental assistance programs in this rule.

To determine the resident payment, as in the Section 8 program, annual reexaminations of family income will be the standard under the proposed rule. However, if a family has income from fixed-income sources, grantees will be able to apply a COLA to those sources of income and will only perform a full reexamination of income every three years. If a family has at least 90 percent of their income from fixed-income sources, the grantees will be able to apply a COLA to the entire income amount, provided the family certifies

that their income is at least 90 percent fixed-income, and the grantee will only have to conduct a full reexamination of family income every three years.

In between full reexaminations, this proposed rule would provide that families receiving HOPWA assistance may request an interim reexamination of family income at any time, but grantees are only required to conduct the reexamination if the family's adjusted income, as defined in the revised 24 CFR 5.611, changes by an amount that the grantee estimates will result in a change of at least 10 percent in annual adjusted income. HUD anticipates that this will decrease the number of reexaminations that HOPWA grantees conduct.

The proposed rule further amends the HOPWA regulations to cross reference § 5.611 more generally and eliminate the reference to the earned income disregard. These changes, which impact calculation of the resident rent payment under HOPWA, similarly impact HUD's Section 8 programs because of HOTMA.

Additionally, this proposed rule would revise part 574 to apply the part 5 definition of net family assets to HOTMA that applies to the Section 8 program, except the value of a home of a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other homeownership assistance eligible under the HOPWA program would be excluded from the definition. This proposed rule would also revise part 574 to incorporate HOTMA's provisions for restrictions on assistance to families with certain assets to the HOPWA program, but would specify that the requirements in 24 CFR 5.618 do not apply to short-term mortgage and utility assistance and other homeownership assistance eligible under the HOPWA program, or to housing information services or supportive services funded under HOPWA.

2. HOME

The proposed rule at 24 CFR 92.203(b) would incorporate HUD's proposed revisions to the definition of income at 24 CFR 5.609(a) and (b), which is the definition of income established by HOTMA, as well as revisions to the definition of Net Family Assets at 24 CFR 5.603 used to determine the imputed income on assets over $50,000 based on the current passbook saving rate. In determining annual income, a participating jurisdiction would continue to exclude income and asset enhancements derived from HOME assistance pursuant to 24 CFR 92.203(d)(1) (*e.g.,* the rental income generated from HOME assistance provided to a multi-unit housing project where the owner occupies one of the units and rents out the other units acquired through the HOME assistance), and the value of a homeowner's principal residence pursuant to 24 CFR 92.203(b)(1) from the calculation of Net Family Assets, as defined in 24 CFR 5.603.

This proposed rule would revise 24 CFR 92.203(c) to move the first sentence into a new standalone paragraph (e) and incorporate the second and third sentences into paragraphs (e)(1) and (e)(2). The new paragraph (e) would incorporate the revisions to the definition of adjusted income at 24 CFR 5.611(a)–(c). It would require participating jurisdictions, when determining a family's adjusted income for the purpose of determining the appropriate amount of rent applicable to a tenant in HOME units receiving Federal or State project-based subsidy, the to apply the mandatory deductions from income established at 24 CFR 5.611(a). For units with tenant-based rental assistance, § 92.203(e)(2) would permit a participating jurisdiction to apply the deductions at § 5.611(a) and grant financial hardship exemptions according to the requirements of § 5.611(c).

Finally, where a family applying for or living in a HOME-assisted unit receives assistance from the HCV program or where a PHA is the owner in the PBRA program, HUD proposes to add § 92.203(e)(3) to require the use of the deductions in § 5.611(a) and (b) to calculate a family's adjusted income. In such cases, HUD would allow a participating jurisdiction to accept a PHA's determination to grant a hardship exemption under § 5.611(c).

*Specific solicitation of comment 17:* HUD is seeking feedback from interested parties on whether HUD should adopt all revisions made to adjusted income (mandatory deductions, additional deduction and hardship exemptions, as applicable) when combining HOME and other federal programs such as Section 8 in a rental project.

Specific solicitation of comment 18: HUD is seeking feedback from interested parties on whether HUD should adopt financial hardship exemptions for families receiving HOME-funded tenant-based rental assistance.

For purposes of calculating tenant income in the HOME program, HUD is not proposing to adopt the new section 5.609(c) for determining income at initial occupancy or interim reexaminations and the timing requirements of those determinations. The HOME regulations permit participating jurisdictions to choose, on a program (*e.g.,* homeownership) basis and on a rental project by project basis, one of two definitions of annual income: (1) Annual income as defined at 24 CFR 5.609; or (2) the Internal Revenue Service definition of ''adjusted gross income.'' For families who are tenants in HOME-assisted housing and not receiving tenant-based rental assistance, the HOME program requires a participating jurisdiction to examine at least 2 months of source documents evidencing annual income at initial occupancy. For subsequent income determinations during the HOME compliance period, the existing HOME regulations permit a participating jurisdiction to use one of three methods to determine annual income. Adopting 24 CFR 5.609(c) for the HOME program would impose different methods for calculating and verifying income that are more stringent than those currently required by the HOME regulations. HUD believes the methods described at 24 CFR 92.203(a)(1) provide a participating jurisdiction more flexibility in administering and managing its HOME-assisted rental housing portfolio.

*Specific solicitation of comment 19:* In light of revisions made to 24 CFR 5.609(c)(3) to allow PHAs to accept a timely income determination of a family from another agency's means-tested Federal public assistance, HUD is seeking feedback from interested parties on whether 24 CFR 92.203(a)(1)(iii) should specify what HUD considers timely for purposes of accepting an income determination of a family made by an administrator of a government program under which the family receives benefits.

There is no independent statutory basis in the HOME program for applying the EID in 24 CFR 5.617 to persons with disabilities who are tenants in HOME-assisted rental housing or who are receiving tenant-based rental assistance. HUD applied 24 CFR 5.617 to HOME through 24 CFR 92.203(d)(3) to be consistent with other programs governed by the 1937 Act. With the revision to the 1937 Act removing the authority for disallowance of earned income and the sunset of the corresponding regulatory provision in 24 CFR 5.617(e), the HOME regulation at 24 CFR 92.203(d)(3) would be revised so that the applicability to HOME will also sunset.

The HOME statute does not establish a limitation on the amount of and type of assets that a family assisted with HOME funds can have. HUD is not proposing to adopt the new asset restriction for the HOME program.

*Specific solicitation of comment 20:* HUD is seeking feedback from interested

parties on whether HUD should adopt asset restrictions for any housing programs funded with HOME (*e.g.,* homebuyer, rental, tenant-based rental assistance and owner-occupied rehabilitation), as well as when housing programs funded with HOME are combined with other federal programs such as Section 8.

3. HTF

The proposed rule at 24 CFR 93.151(b) incorporates HUD's proposed revisions to the definition of annual income at 24 CFR 5.609(a) and (b), which is the definition of income provided by HOTMA, as well as the revisions to the definition of Net Family Assets at 24 CFR 5.603 that are used to determine the imputed income on assets over $50,000 based on the current passbook saving rate.

For purposes of calculating tenant income in the HTF program, HUD is not proposing to adopt the new section 5.609(c) for determining income at initial occupancy or interim reexaminations and the timing requirements for those determinations. For families who are tenants in HTF-assisted housing, the HTF program requires a grantee to examine at least 2 months of source documents evidencing annual income at initial occupancy. For subsequent income determinations during the HTF compliance period, a grantee may use one of three methods to determine annual income. Adopting 24 CFR 5.609(c) for the HTF program would impose methods for calculating and verifying income that are more stringent than those currently required by the HTF regulations without providing additional benefit to the program. As HTF does not provide an ongoing subsidy to grantees, HUD believes the methods described at 24 CFR 93.151(d) provide a grantee more flexibility in administering and managing its HTF-assisted rental housing portfolio.

*Specific solicitation of comment 21:* In light of revisions made to 24 CFR 5.609(c)(3) to allow PHAs to accept a timely income determination of a family from another agency's means-tested Federal public assistance, HUD is seeking feedback from interested parties on whether 24 CFR 93.151(d) should specify what HUD considers timely for purposes of accepting an income determination of a family made by an administrator of a government program under which the family receives benefits.

This proposed rule would revise 24 CFR 93.151(b) to clarify that annual income includes income from all persons in the household regardless of which definition of annual income the grantee applies to its HTF-assisted program(s) or project(s). Furthermore, this proposed rule would revise 24 CFR 93.151 to add a new paragraph (e) to incorporate revisions to adjusted income in § 5.611 and requires grantees to apply the deductions in § 5.611(a) to determine the tenant's adjusted income. For public housing, the HCV program, and where the PHA is an owner in the PBRA program, paragraph (e)(2) requires the use of the deductions in § 5.611(a) and (b) to determine the tenant's adjusted income and also permits a grantee to accept a PHA's decision to grant financial hardship exemptions under § 5.611(c) to a family.

The HTF statute did not establish a limitation on the amount of and type of assets that a family assisted with HTF funds may have. HUD is not proposing to adopt the new asset restriction for the HTF program.

*Specific solicitation of comment 22:* HUD is seeking feedback from interested parties on whether HUD should adopt asset restrictions for any housing programs funded with HTF funds (*e.g.,* homebuyer or rental housing), as well as when HTF funds are combined with other federal programs such as Section 8.

## III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

The rule would update HUD regulations for various programs to conform to sections 102, 103, and 104 of HOTMA by listing specific criteria for triggering family income reviews, providing methods for calculating family income, revising the definition of income and adjusted income, setting a limit on the amount and type of assets that assisted families may have, revising the definition of net family assets, and requiring that applicants for and recipients of assistance provide authorization to PHAs to obtain financial records. This proposed rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the order). HUD has prepared an initial Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the proposed rule. HUD's RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800–877–8339.

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This proposed rule is expected to be an E.O. 13771 deregulatory action. HUD estimates that this rule would have annual net cost savings in the first year of about $2 million and after the first year, of about $23 million to $27 million, accruing to Public Housing Agencies, HOPWA grantees, and Project-Based Rental Assistance owners. Around 20,000 to 30,000 units may transfer from currently assisted households to households on the waitlist or new applicants. Further details on the estimated cost savings of this proposed rule can be found in the rule's RIA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule revises HUD regulations in certain ways that will reduce burden or provide flexibility for PHAs and owners and other housing providers. The proposed rule provides specific events that trigger an interim reexamination of family income, whereas current regulations provide that families may request reexaminations at any time. The proposed rule provides methods for calculating family income, but also provides a safe harbor for PHAs and owners who determine a family's income based on other means-tested

Federal public assistance programs. Additionally, this proposed rule provides for a limitation on assets, but provides that PHAs and owners may choose not to enforce this provision. This proposed rule also provides that applicants and recipients of assistance must provide authorization for PHAs to obtain financial records in order to verify family income.

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

The proposed rule relates to establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance and related external administrative or fiscal requirements and procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2502–0204, 2506–0133, and 2577–0083. HUD expects to make changes to these existing recordkeeping items consistent with the changes in this proposed rule and believes that the changes will result in a decrease of burden of $8,337,744 and 345,495 hours.

HUD would change the HOPWA PRA OMB No. 2506–0133 to reduce the recordkeeping burden hours from 60 hours to 50 hours per grantee to reflect the change to a triennial recertification and the reduction in the frequency of granting interim reexaminations. See § 574.310(e).

| Information collection | Number of responses | Annual number | Annual burden | | Hourly cost | Annual cost | |
|---|---|---|---|---|---|---|---|
| OMB No. 2502–0133 | | | Current | New | | Current | New |
| Recordkeeping for Competitive, Renewal, and Formula Grantees | 227 | 1 | 60.00 | 50.00 | $23.85 | $324,837 | $270,698 |
| Total | | | Savings | 2,270 | | Savings | 54,139 |

HUD would change the Section 8 project-based PRA OMB No–2502–0204 to reflect the regulatory change that a new consent to release of information would only apply at the time of initial tenancy, estimated at an approximate 80 percent reduction based on anticipated number of new participants, and reduce the number of certification compliances conducted by project owners to represent the decrease in interim reexaminations, estimated at 5 percent of recertifications. See §§ 5.230 and 5.657.

| Information collection | Number of responses | | Annual number | Hours per response | Annual burden | | Hourly cost | Annual cost | |
|---|---|---|---|---|---|---|---|---|---|
| OMB No. 2502–0204 | Current | New | | | Current | New | | Current | New |
| Certification Compliance | 1,597,764 | 1,517,876 | 1 | .6333 | 1,011,864 | 961,271 | $25.00 | $25,296,600 | $24,031,771 |
| Consent for Release | 1,597,764 | 302,022 | 1 | .1667 | 266,347 | 50,347 | 25.00 | 6,658,675 | 1,258,675 |
| Total | | | | | Savings | 266,593 | | Savings | 6,664,829 |

HUD would also change the Public Housing and HCV programs PRA OMB No. 2577–0083. HUD provides for a new burden in the Public Housing context for providing notices to over-income tenants and reporting the number of families on the waiting list annually, and the change includes a reduction in burden for Public Housing and HCV to reflect the decrease in interim reexaminations, estimated at 5 percent of recertifications. HUD would also change the Public Housing and HCV programs PRA OMB No. 2501–0014 to reflect the regulatory change that a new consent to release information would only apply at the time of initial tenancy, estimated at an approximate 88 percent reduction based on anticipated number of new participants. See §§ 5.230, 960.257, 960.507 and 982.516.

| Information collection | Number of responses | | Annual number | Hours per response | Annual burden | | Hourly cost | Annual cost | |
|---|---|---|---|---|---|---|---|---|---|
| OMB No. | Current | New | | | Current | New | | Current | New |
| Recertification (OMB No. 2577–0083) | 2,398,462 | 2,278,539 | 1 | .333 | 798,688 | 758,753 | $17.50 | $13,977,040 | $13,278,178 |
| Over-Income Tenant Notification | | 2,000 | 1 | .1667 | | 333 | 17.50 | | 5,828 |

| Information collection | Number of responses | | Annual number | Hours per response | Annual burden | | Hourly cost | Annual cost | |
|---|---|---|---|---|---|---|---|---|---|
| OMB No. | Current | New | | | Current | New | | Current | New |
| Public Housing Waiting List Data | | 2,929 | 1 | 4 | | 11,716 | 17.50 | | 205,030 |
| Consent for Release (OMB No, 2501–0014) | [2] 3,765,676 | 421,693 | 1 | .1667 | 627,738 | 70,296 | 30.00 | 18,832,140 | 2,108,880 |
| Total | | | | | Savings | 585,328 | | Savings | 17,225,264 |

HUD believes that there are no PRA burden reductions for HOME and the HTF programs. Also, HUD finds that while changes to § 5.609, Annual Income, and § 5.611, Adjusted Income, will result in tenants providing different information, the net burden will not change. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposed rule by name and docket number (FR–6057) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947

and

Colette Pollard, HUD Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 2204, Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.239, 14.241, 14.275, 14.850, 14.856, and 14.871.

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 92*

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

*24 CFR Part 93*

Administrative practice and procedure, Grant programshousing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 574*

Community facilities, Grant programs-housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements

*24 CFR Part 960*

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

*24 CFR Part 982*

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5, 92, 93, 574, 960, 966, and 982 as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

■ 2. In § 5.100, add in alphabetical order the definitions for ''earned income'' and ''real property'' to read as follows:

[2] This number is based on the PIH Information Center (PIC) database and the Tenant Rental Assistance Certification System (TRACS) database.

**§ 5.100 Definitions.**

* * * * *

*Earned income* means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. Earned income does not include any pension or annuity, transfer payments, or any cash or in-kind benefits.

* * * * *

*Real property* as used in this part, has the same meaning as that provided under the state law in which the real property is located.

* * * * *

■ 3. In § 5.210, revise the second sentence in paragraph (a) and the first sentence in paragraph (b)(2) to read as follows:

**§ 5.210 Purpose, applicability, and Federal preemption.**

(a) * * * This subpart B also enables HUD and PHAs to obtain income information about applicants and participants in the covered programs through computer matches with State Wage Information Collection Agencies (SWICAs) and Federal agencies, and from financial institutions and employers, in order to verify an applicant's or participant's eligibility for or level of assistance. * * *

(b) * * *

(2) The information covered by consent forms described in this subpart involves income information from SWICAs and wages, income and resource information from financial institutions, net earnings from self-employment, payments of retirement income, and unearned income as referenced at 26 U.S.C. 6103. * * *

* * * * *

■ 4. In § 5.230, revise paragraph (c)(4), and add paragraph (c)(5) to read as follows:

**§ 5.230 Consent by assistance applicants and participants.**

* * * * *

(c) * * *

(4) A provision authorizing PHAs to obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (42 U.S.C. 1304), whenever the PHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits; and

(5) A statement that the authorization to release the information requested by the consent form shall remain effective until the earliest of:

(i) The rendering of a final adverse decision for an assistance applicant;

(ii) The cessation of a participant's eligibility for assistance from HUD and the PHA; or

(iii) The express revocation by the assistance applicant or recipient (or applicable family member) of the authorization, in a written notification to HUD.

■ 5. In § 5.232, add paragraph (c) to read as follows:

**§ 5.232 Penalties for failing to sign consent form.**

* * * * *

(c) This section does not apply if the applicant or participant, or any member of the assistance applicant's or participant's family revokes his/her consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy in the PHA's Annual Plan that revocation of consent to access financial records will result in denial or termination of assistance or admission.

■ 6. In § 5.601:

■ a. Amend paragraph (d) by removing the phrases ''HOME Investment Partnerships Program (24 CFR part 92);'' and ''Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance (24 CFR part 583);'', and

■ b. Revise paragraph (e) to read as follows:

**§ 5.601 Purpose and applicability.**

* * * * *

(e) Limitations on eligibility for assistance based on assets, as provided in § 5.618, in the Section 8 (tenant-based and project-based) and public housing programs.

■ 7. In § 5.603, add in alphabetical order definitions for ''Distribution from a trust'', ''Foster adults'', and ''Minor'', and revise the definitions for ''net family assets'' and ''responsible entity'' to read as follows:

**§ 5.603 Definitions.**

* * * * *

(b) * * *

*Distribution from a trust.* Any cash payout to the beneficiary or any payment to a third-party on behalf of the beneficiary.

* * * * *

*Foster adults.* Persons with disabilities, not related to the family, who are unable to live alone.

* * * * *

*Minor.* A member of the family, other than the head of family or spouse, who is less than 18 years of age.

* * * * *

*Net family assets.* (1) Net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of investment.

(2) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(3) Excluded from the calculation of net family assets are:

(i) Interests in Indian trust land;

(ii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982;

(iii) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982.

(iv) Family Self-Sufficiency Accounts;

(v) Necessary items of personal property, and all items of personal property valued at $50,000 or less;

(vi) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals;

(vii) Real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located;

(viii) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family being disabled; and

(ix) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, and the value of any ABLE account authorized under Section 529A of such code.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household,

the value of the trust fund will not be considered in the calculation of net family assets, so long as the fund continues to be held in trust.

* * * * *

*Responsible entity.* For § 5.611, in addition to the definition of ''responsible entity'' in § 5.100, ''responsible entity'' means:

(1) For the Rent Supplement Payments Program, the owner of the multifamily project;

(2) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(3) For the Section 202 Supportive Housing Program for the Elderly, the ''Owner'' as defined in 24 CFR 891.205;

(4) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the ''Borrower'' as defined in 24 CFR 891.505; and

(5) For the Section 811 Supportive Housing Program for Persons with Disabilities, the ''owner'' as defined in 24 CFR 891.305.

* * * * *

■ 8. Revise § 5.609 to read as follows:

**§ 5.609 Annual income.**

(a) Annual income means, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is less than 18 years of age, and

(2) The imputed return on assets over $50,000 based on the current passbook savings rate, as determined by HUD, if the actual income on assets over $50,000 cannot be computed. The $50,000 figure in this paragraph shall be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD.

(b) Annual income does not include the following:

(1) Any imputed return on assets of $50,000 or less, which figure shall be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD;

(2) Distribution from a non-revocable trust fund specifically provided to cover the cost of medical expenses for a minor;

(3) Income from employment of children (including foster children) under the age of 18 years and foster adults;

(4) Payments received for the care of foster children or foster adults, or state kinship or guardianship care payments;

(5) Insurance payments and settlement for personal or property losses;

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family being disabled;

(8) Income of a live-in aide, as defined in § 5.403;

(9) The full amount of student financial assistance paid directly to the student or to the educational institution on the student's behalf, except this does not apply for students applying for or receiving section 8 assistance pursuant to § 5.612 who are not over the age of 23 with dependent children. Financial assistance is any grant-in-aid, scholarship or other assistance amounts an individual receives for the cost of tuition, books, room and board, and fees charged to the student by the education institution. For students applying for or receiving section 8 assistance who are not over the age of 23 with dependent children, the financial assistance in excess of the cost of tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002), shall be considered income;

(10) Amounts from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, any qualified tuition program under section 529 of such Code, and any amounts from ABLE accounts under section 529A of such Code;

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(12)(i) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development;

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(13) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(14) Earned income of dependent full-time students, except that the earned income up to the amount of the deduction for a dependent in § 5.611 of each dependent student shall be considered income;

(15) Adoption assistance payments in excess of $480 per adopted child, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD;

(16) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts;

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance;

(18) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(19) Payments provided by a State Medicaid managed care system to a family to keep a member who has a disability living at home;

(20) Loan proceeds (the net amount disbursed by a lender to a borrower, under the terms of a loan agreement) received by the family (*e.g.,* proceeds received by the family to finance the purchase a car);

(21) Payments received by Indian persons as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent

such payments are also excluded from gross income under the Internal Revenue Code;

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. A notice will be published in the **Federal Register** and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary; or

(23) Replacement housing ''gap'' payments made in accordance with 49 CFR part 24 to a displaced person that moves from a federally subsidized housing unit and occupies another federally subsidized housing unit when such payments offset the increased out of pocket cost to the displaced person for rent and utilities because of the displacement. Such replacement housing ''gap'' payments are not excluded from annual income, however, to the extent that the increased cost of rent and utilities is subsequently reduced or eliminated and the displaced person retains or continues to receive the replacement housing ''gap'' payments.

(c) *Calculation of Income.* The PHA or owner shall calculate family income as follows:

(1) *Initial occupancy or assistance and interim reexaminations.* The PHA or owner shall estimate the income of the family for the upcoming 12-month period:

(i) To determine family income for initial occupancy or for the initial provision of housing assistance; or

(ii) To determine family income for an interim reexamination of family income under § 5.657(c), 24 CFR 960.257(b), or 24 CFR 982.516(c).

(2) *Annual Reviews.* (i) The PHA or owner shall determine the income of the family for the previous 12-month period and use this figure as the family income for annual reviews, except where the PHA or owner uses a streamlined income determination under § 5.657(d), 24 CFR 960.257(c), or 24 CFR 982.516(b).

(ii) In determining the income of the family for the previous 12-month period, the PHA or owner shall take into consideration any redetermination of income during the previous 12-month period resulting from an interim reexamination of family income under § 5.657(c), 24 CFR 960.257(b), or 24 CFR 982.516(c).

(iii) The PHA or owner must make adjustments to reflect current income if there was a change in income during the previous 12-month period that was not accounted for in a redetermination of income.

(3) The PHA or owner may determine the family's income prior to the application of any deductions applied in accordance with § 5.611 based on timely income determinations made within the previous 12-month period for purposes of the following means-tested Federal public assistance:

(i) The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, *et seq.*).

(ii) Medicaid assistance (42 U.S.C. 1396 *et seq.*).

(iii) The Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*).

(iv) The Earned Income Tax Credit (26 U.S.C. 32).

(v) Other forms of Federal public assistance determined by the Secretary to have comparable reliability and announced through **Federal Register** notice.

(4) The PHA or owner will not be considered out of compliance with the requirements in this paragraph (c) solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA or owner determination of family income varies from the correct income determination by no more than 5 percent. The PHA or owner must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

■ 9. Revise § 5.611 to read as follows:

**§ 5.611 Adjusted income.**

*Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* (1) $480 for each dependent, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, rounded to the next lowest multiple of $25;

(2) $525 for any elderly family or disabled family, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, rounded to the next lowest multiple of $25;

(3) The sum of the following, to the extent the sum exceeds ten percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.* (1) For public housing, the Housing Choice Voucher (HCV) program, and where the PHA is the owner in the Section 8 project-based programs, a PHA may adopt additional deductions from annual income. A PHA that adopts such deductions will not be eligible for an increase in subsidy for the public housing program, renewal funding for the HCV program, or housing assistance payments under the Section 8 project-based programs to cover the cost of the additional deductions. The PHA must establish a written policy for such deductions. The PHA must report to HUD the increased subsidy cost resulting from the additional deduction.

(2) For the HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

(c) *Financial hardship exemption for unreimbursed medical expense and child care expense deductions.* (1) *Exemption for unreimbursed medical expense deduction.* A family may request a financial hardship exemption due to the change in the unreimbursed medical expense deduction under paragraph (a)(3) of this section, under which the amount of unreimbursed expenses that are not deductible has been increased from 3 to 10 percent of annual income. The family must demonstrate to the responsible entity's satisfaction an inability to pay their rent as a result of this change. If the hardship exemption is approved, the responsible entity must recalculate the family's adjusted income, and under paragraph (a)(3) of this section deduct the sum of the eligible expenses that exceeds 6.5 percent of annual income instead of 10 percent of annual income. The hardship exemption and the resulting alternative calculation for the unreimbursed medical expenses deduction will end at the family's next regular examination or such time that the responsible entity determines the family can now pay the

rent without the hardship exemption, whichever comes first.

(2) *Exemption to continue child care expense deduction.* A family may request a financial hardship exemption to continue the child care expense deduction under paragraph (a)(4) of this section. The responsible entity must recalculate the family's adjusted income and continue the child care deduction if the family demonstrates to the responsible entity's satisfaction that the family is unable to pay their rent because of loss of the child care expense deduction and the child care expense is still necessary even though the family member is no longer employed or furthering his or her education. The hardship exemption allowing the child care expense deduction to continue ends at the earliest of:

(i) The family's next regular reexamination;

(ii) Such time the responsible entity determines the need no longer exists for the childcare expense if no adult family member is employed or furthering their education no longer exists; or

(iii) Such time the responsible entity determines that family is able to pay their rent without the hardship exemption.

(3) *Responsible entity determination of family's inability to pay the rent.* The responsible entity must establish a policy on how it defines and determines the family's inability to pay the rent for purposes of determining eligibility for a hardship exemption under this paragraph (c).

(4) *Family notification.* The responsible entity must notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from the hardship exemption. The notice must also inform the family that the hardship exemption will expire at the family's next regular income reexamination or at such time the responsibility entity determines the exemption is no longer necessary in accordance with paragraph (c)(1) or (c)(2) of this section.

■ 10. Amend § 5.617 by adding paragraph (e) to read as follows:

**§ 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

* * * * *

(e) Effective [EFFECTIVE DATE OF FINAL RULE], this section will not apply to any family who is not eligible for and participating in the disallowance of earned income under this section on [EFFECTIVE DATE OF FINAL RULE].

**§ 5.617 [Removed]**

■ 11. Remove § 5.617.

■ 12. Add § 5.618 to subpart F to read as follows:

**§ 5.618 Restriction on assistance to families based on assets.**

(a) *Restrictions based on net assets and property ownership.* (1) A dwelling unit may not be rented, and assistance may not be provided, either initially or upon reexamination of family income, to any family if:

(i) The net family assets (as defined in § 5.603) exceed $100,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD; or

(ii) The family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell, in the jurisdiction in which the property is located, real property that is suitable for occupancy by the family as a residence, except this restriction does not apply to:

(A) Any property for which the family is receiving assistance under 24 CFR 982.620; or under the Homeownership Option in 24 CFR part 982;

(B) Any property that is jointly owned by a member of the family and another individual or individuals who would not reside with the family;

(C) Any person that is a victim of domestic violence, dating violence, sexual assault, or stalking, as defined in this part 5 (subpart L); or

(D) Any family that is offering such property for sale.

(2) A property will be considered ''suitable for occupancy'' under paragraph (a)(1)(ii) of this section unless the family demonstrates that it:

(i) Does not meet the disability-related needs for all members of the family, including physical accessibility requirements;

(ii) Is not sufficient for the size of the family;

(iii) Is geographically located so as to provide a hardship for the family; or

(iv) Is not safe to reside in because of the physical condition of the property.

(b) *Self-certification.* (1) A PHA or owner may determine the net assets of a family based on a certification by the family that the net family assets (as defined in § 5.603) do not exceed $50,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(2) A PHA or owner may determine compliance with paragraph (a)(1)(ii) of this section based on a certification by a family that certifies that such family does not have any present ownership interest in any real property at the time of the income determination or review.

(c) *Enforcement.* (1) When recertifying the income of a family that is subject to the restrictions in paragraph (a) of this section, a PHA or owner may choose not to enforce such restrictions, or alternatively, may establish exceptions to the restrictions based on eligibility criteria.

(2) The PHA or owner may only choose not to enforce the restrictions in paragraph (a) of this section or establish exceptions to such restrictions pursuant to a policy set forth in the public housing agency plan or under a policy adopted by the owner.

(3) Eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. Such policies must be in conformance with all applicable fair housing statutes and regulations, as discussed in this part 5.

(d) *Eviction delays.* The PHA or owner may delay for a period of not more than 6 months the initiation of eviction or termination proceedings of a family based on noncompliance under this provision.

(e) *Applicability.* This section applies to the Section 8 (tenant-based and project-based) and public housing programs.

■ 13. In § 5.657, revise paragraph (c) and add paragraph (e) to read as follows:

**§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.**

* * * * *

(c) *Interim reexaminations.* (1) A family may request an interim reexamination of family income. The owner must make the interim reexamination within a reasonable time after the family request.

(2) The owner may decline to process a family request for an interim reexamination if the owner estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the owner. If the owner determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the owner) the

owner must make the interim reexamination within a reasonable time after the family's request.

(3) The owner must conduct a reexamination of family income within a reasonable time after the owner becomes aware that the family's adjusted income (as defined in § 5.611) has changed by an amount that the owner estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(i) The owner may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (c)(2) of this section during the year;

(ii) The owner may choose not to conduct an interim reexamination in the last three months of a certification period; and

(iii) The owner will not be considered out of compliance with the requirements in this paragraph solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the owner determination of family income varies from the correct income determination by no more than 5 percent. The owner must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

(4) The owner must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

* * * * *

(e) Reviews of family income under this section are subject to the provisions in Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544) and any applicable privacy rules in subpart B of this part.

■ 14. In § 5.659, revise paragraph (e) to read as follows:

**§ 5.659 Family information and verification.**

* * * * *

(e) *Verification of assets.* For a family with net family assets (as the term is defined in § 5.603) equal to or less than $50,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, an owner may accept, for purposes of recertification of income, a family's declaration under § 5.618(b), except that the owner must obtain third-party verification of all family assets every 3 years.

* * * * *

## PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 15. The authority citation for part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 16. In § 92.203, add subject headings to paragraphs (a) and (b), revise paragraphs (b)(1), and (c), add a heading to paragraph (d), revise paragraph (d)(1), and add paragraph (e) to read as follows:

**§ 92.203 Income determinations.**

(a) *Methods of determining income.*

* * *

(b) *Defining income for eligibility.*

* * *

(1) Annual income as defined at 24 CFR 5.609 (a) and (b) (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or

* * * * *

(c) *Using Income Definitions.* The participating jurisdiction may use only one definition of annual income for each HOME-assisted program (*e.g.,* downpayment assistance program) that it administers and for each rental housing project.

(d) *Projecting Income.* (1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income includes income from all persons in the household. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

* * * * *

(e) *Determining Adjusted Income.* Although the participating jurisdiction may use either of the definitions of ''annual income'' permitted in paragraph (b) of this section to calculate annual income, it must then apply deductions from income in 24 CFR 5.611(a) to determine the family's adjusted income.

(1) The participating jurisdiction must use a family's adjusted income when determining tenant contribution in units receiving Federal or State project-based rental subsidy pursuant to § 92.252(b).

(2) The participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family in accordance with § 92.209(h) and may grant financial hardship exemptions to a family receiving tenant-based rental assistance in accordance with § 5.611(c) of this title.

(3) When a family applying for or living in a HOME-assisted rental unit receives section 8 housing choice voucher assistance, or when a public housing agency owns the HOME-assisted rental unit in the project-based Section 8 programs, the participating jurisdiction must apply the income deductions in 24 CFR 5.611(a) and (b) to determine the family's adjusted income and may accept a public housing agency's determination to grant financial hardship exemptions to the family under 24 CFR 5.611(c).

**§ 92.203 [Amended]**

■ 17. Amend § 92.203 by removing paragraph (d)(3).

## PART 93—HOUSING TRUST FUND

■ 18. The authority citation for part 93 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 19. In § 93.151, revise paragraph (b)(1)(i) and add paragraphs (b)(3) and (e) to read as follows:

**§ 93.151 Income determinations.**

* * * * *

(b) * * *

(1) * * *

(i) ''Annual income'' as defined at 24 CFR 5.609(a) and (b); or

* * * * *

(3) Annual income includes income from all persons in the household.

* * * * *

(e) *Adjusted Income.* (1) Although the grantee may use either of the definitions of ''annual income'' permitted in paragraph (b) of this section to calculate annual income, the grantee must then apply deductions established in 24 CFR 5.611(a) to determine the tenant's adjusted income.

(2) For public housing, the housing choice voucher program, and where the public housing agency is the owner in the Section 8 project-based programs, a grantee must apply the public housing agency income deductions at 24 CFR 5.611(a) and (b) to determine the family's adjusted income and may accept a public housing agency's determination to grant financial hardship exemptions pursuant to 24 CFR 5.611(c).

## PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 20. The authority citation for part 574 continues to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d) and 5301–5320.

■ 21. In § 574.310, revise paragraph (d)(1); redesignate paragraph (e) as paragraph (g), and add new paragraphs (e) and (f) to read as follows:

**§ 574.310 General Standards for eligible housing activities.**

* * * * *

(d) * * *

(1) 30 percent of the family's monthly adjusted income (calculated under 24 CFR 5.611);

* * * * *

(e) *Reexamination of family income.* (1) *Annual reexaminations.* For purposes of determining resident rent payments, grantees will conduct a reexamination and redetermination of family income every year.

(2) *Interim reexaminations.* (i) A family may request an interim reexamination of family income at any time. The grantee must make the interim reexamination within a reasonable period of time after the family's request.

(ii) Grantees may decline to process a family request for an interim reexamination if the grantee estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the grantee. If the grantee determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the grantee) the grantee must make the interim reexamination within a reasonable time after the family's request.

(iii) Grantees must conduct the reexamination of family income within a reasonable time after the grantee becomes aware that the family's adjusted income (as defined in § 5.611 of this title) has changed by an amount that the grantee estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(A) The grantee may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased unless the family has previously received an interim reduction under paragraph (e)(2)(ii) of this section during the year;

(B) The grantee may choose not to conduct an interim reexamination in the last three months of a certification period; and

(C) The grantee will not be considered out of compliance with the requirements in this paragraph solely due to *de minimis* errors in calculating family income but is still obligated to correct errors once the grantee becomes aware of the errors. A *de minimis* error is an error where the grantee's determination of family income varies from the correct income determination by no more than 5 percent. The grantee must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the *de minimis* error in the income determination.

(iv) The grantee must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

(3) *Streamlined income determinations.* (i) A grantee may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (e)(3)(iii) of this section.

(ii) *Definition of fixed income.* For purposes of this section, fixed income means periodic payments at reasonably predictable levels from one or more of the following sources:

(A) Social Security, Supplemental Security Income, Supplemental Disability Insurance.

(B) Federal, state, local, or private pension plans.

(C) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.

(D) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(iii) *Method of streamlined income determination.* Grantees using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(A) When 90 percent or more of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, grantees may choose to make adjustments pursuant to paragraph (e)(1) of this section.

(B) When less than 90 percent of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA to each of the family's sources of fixed income. Grantees must determine all other income pursuant to paragraph (e)(1) of this section.

(iv) *COLA rate applied by grantees.* Grantees using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the grantee must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(v) *Triennial verification.* For any income determined pursuant to a streamlined income determination, a grantee must obtain third-party verification of all income amounts every 3 years.

(f) *Net family assets and restriction on assistance to families based on assets.* (1) The definition of net family assets in § 5.603 of this title applies to this part, except the value of a home of a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other homeownership assistance eligible under the HOPWA program is excluded from the definition.

(2) The requirements in § 5.618(a) through (d) of this title on providing assistance to families who have certain assets apply to HOPWA assistance provided under this part, except that § 5.618 of this title does not apply to the provision of short-term mortgage or utility assistance under § 574.300(b)(6) or other homeownership assistance eligible under the HOPWA program, housing information services, as described in § 574.300(b)(1), or supportive services, as described in § 574.300(b)(7).

* * * * *

## PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 22. The authority citation for part 960 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

■ 23. In § 960.102, revise the definition of ''Over-income family'' in paragraph (b) to read as follows:

**§ 960.102 Definitions.**

* * * * *

(b) * * *

*Over-income family.* A family whose income exceeds the local over-income limit. See subpart E of this part.

* * * * *

■ 24. In § 960.253, revise paragraph (f)(1) to read as follows:

**§ 960.253 Choice of rent.**

* * * * *

(f) * * *

(1) For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income and composition at least once every three years, except for families that are found to be over-income. Once a family is determined to be over-income, the PHA must follow the documentation and reexamination requirements under § 960.507(c).

■ 25. Amend § 960.255. by adding paragraph (e) to read as follows:

**§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.**

* * * * *

(e) Effective [EFFECTIVE DATE OF FINAL RULE], this section will not apply to any family who is not eligible for and participating in the disallowance of earned income under this section on [EFFECTIVE DATE OF FINAL RULE].

**§ 960.255 [Removed]**

■ 26. Remove § 960.255.

■ 27. In § 960.257, revise paragraph (b), and add paragraph (e) to read as follows:

**§ 960.257 Family income and composition: Annual and interim reexaminations.**

* * * * *

(b) *Interim reexaminations.* (1) A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must conduct the interim reexamination within a reasonable period of time after the family request.

(2) The PHA may decline to process a family request for an interim income reexamination if the PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the PHA. If the PHA determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the PHA), the PHA must conduct the interim income reexamination within a reasonable period of time after the family's request.

(3) The PHA must conduct a reexamination of family income within a reasonable time after the PHA becomes aware that the family's adjusted income (as defined in 24 CFR 5.611) has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(i) The PHA may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (b)(2) of this section during the year;

(ii) The PHA may choose not to conduct an interim reexamination in the last three months of a certification period; and

(iii) The PHA will not be considered out of compliance with the requirements in this paragraph solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income varies from the correct income determination by no more than 5 percent. The PHA must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

(4) The PHA must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

* * * * *

(e) Reviews of family income under this section are subject to the provisions in Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544).

■ 28. In § 960.259, revise paragraph (c)(2) to read as follows:

**§ 960.259 Family information and verification.**

* * * * *

(c) * * *

(2) For a family with net family assets (as the term is defined in 24 CFR 5.603) equal to or less than $50,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, a PHA may accept, for purposes of recertification of income, a family's declaration under 24 CFR 5.618(b), except that the PHA must obtain third-party verification of all family assets every 3 years.

**§ 960.261 [Removed]**

■ 29. Remove § 960.261.

■ 30. Add § 960.507 to Subpart E read as follows:

**§ 960.507 Families exceeding the income limit.**

(a) *In general.* Families residing in public housing may not, except as provided in § 960.503, have incomes that exceed the local over-income limit.

(b) *Determination of over-income limit.* The local over-income limit is determined by multiplying the applicable income limit for a very low-income family as defined in 24 CFR 5.603(b), by a factor of 2.4.

(c) *Documenting over-income families.* (1) When a PHA becomes aware, through an annual reexamination, or an interim reexamination for an increase in income, that a family's income exceeds the applicable over-income limit, the PHA must document that the family exceeds the threshold.

(2) If, a year after the documentation in paragraph (c)(1) of this section, the PHA determines that the family still has an income exceeding the over-income limit, the PHA must provide written notification to the family that their income has exceeded the over-income limit for one year, and that if the family's income continues to exceed the over-income limit for the next 12 consecutive months, the family will be subject to either a higher rent payment or termination, based on the PHA's policies under paragraph (d).

(3) If a PHA discovers that a previously over-income family has income that is now below the over-income limit, the family is no longer subject to these provisions. The family is entitled to a new 2-year grace period if the family's income once again exceeds the over-income limit.

(d) *End of grace period.* Once a family has exceeded the over-income limit for two consecutive years, the PHA must, as detailed in its Admissions and Continued Occupancy Policies (ACOP)—

(1) Charge the family a monthly rent equal to the greater of—

(i) The applicable fair market rent for the unit; or

(ii) The amount of the monthly subsidy provided for the unit, which will be determined by summing the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund.

(A) For the Public Housing Capital Fund, the amount of Capital Funds provided to the unit will be calculated as the per unit Capital Fund assistance provided to a PHA for the development

in which the family resides for the most recent funding year for which Capital Funds have been allocated;

(B) For the Public Housing Operating Fund, the amount of Operating Funds provided to the unit will be calculated as the per unit amount provided to the public housing project where the unit is located for the most recent funding year for which a final funding eligibility determination has been made;

(C) HUD will publish such funding amounts no later than December 31st each year; or

(2) Terminate the tenancy of the family no more than 6 months after the third determination that the family's income exceeds the income limit in paragraph (a) of this section. PHAs must continue to charge these families the non-over-income rent amount (the family's choice of income-based or flat rent) for the time period during the 6-month period before termination.

(e) *Reporting.* Each PHA must submit a report annually to HUD that specifies, as of the end of the year, the number of families residing in public housing with incomes exceeding the over-income limit and the number of families on the waiting lists for admission to public housing projects. These reports must also be publicly available.

## PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 31. The authority citation for part 966 continues to read as follows:

**Authority:** 42 U.S.C. 1437d and 3535(d).

■ 32. In § 966.4, revise paragraph (l)(2)(ii) to read as follows:

### § 966.4 Lease requirements.

* * * * *

(l) * * *

(2) * * *

(ii) Being over the income limit for the program, as provided in 24 CFR 960.507.

## PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 33. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

■ 34. In § 982.516, revise paragraphs (a)(3), (c), and (d), and add paragraph (h) to read as follows:

### § 982.516 Family income and composition: Annual and interim reexaminations.

(a) * * *

(3) For a family with net family assets (as the term is defined in 24 CFR 5.603) equal to or less than $50,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, a PHA may accept, for purposes of recertification of income, a family's declaration under 24 CFR 5.618(b), except that the PHA must obtain third-party verification of all family assets every 3 years.

* * * * *

(c) *Interim reexaminations.* (1) A family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must conduct an interim reexamination within a reasonable period of time after the family request.

(2) The PHA may decline to process a family request for an interim income reexamination if the owner or PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the PHA. If the PHA determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the PHA), the PHA must conduct the interim income reexamination within a reasonable period of time after the family's request.

(3) The PHA must conduct a reexamination of family income within a reasonable time after the PHA becomes aware that the family's adjusted income (as defined in 24 CFR 5.611) has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(i) The PHA may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (c)(2) of this section during the year;

(ii) The PHA may choose not to conduct an interim reexamination in the last three months of a certification period; and

(iii) The PHA will not be considered out of compliance with the requirements in this paragraph solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income varies from the correct income determination by no more than 5 percent. The PHA must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

(4) The PHA must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

(d) *Family reporting of change.* The PHA must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

* * * * *

(h) Reviews of family income under this section are subject to the provisions in Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544).

Dated: August 13, 2019.

**Brian D. Montgomery,**

*Acting Deputy Secretary.*

[FR Doc. 2019–19774 Filed 9–16–19; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 46 CFR Part 11

**[Docket No. USCG–2017–1025]**

**RIN 1625–AC42**

## Crediting Recent Sea Service of Personnel Serving on Vessels of the Uniformed Services

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to increase from 3 years to 7 years the period within which qualifying sea service aboard vessels of the uniformed services can be used to satisfy the requirement for recent sea service to qualify for a Merchant Mariner Credential with a national officer endorsement. This notice of proposed rulemaking would implement into Coast Guard regulations legislation that has been codified in statute, and may potentially increase the number of merchant mariners available for employment on commercial vessels.

**DATES:** Comments and related material must be received by the Coast Guard on or before November 18, 2019.

**ADDRESSES:** You may submit comments identified by docket number USCG–2017–1025 using the Federal eRulemaking Portal at *https://*

*www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

*Collection of Information Comments.* Submit comments on the collection of information discussed in Section VI.D of this preamble both to the Coast Guard's online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget using one of the following two methods:

- *Email: dhsdeskofficer@omb.eop.gov.*
- *Mail: OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.*

**FOR FURTHER INFORMATION CONTACT:** For information about this document, call or email Ms. Cathleen Mauro, Maritime Personnel Qualifications Division (CG–MMC–1), Coast Guard; telephone: 202–372–1449, email *Cathleen.B.Mauro@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents for Preamble**



## I. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section for alternate instructions. Documents mentioned in this notice of proposed rulemaking, and all public comments, will be available in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

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

We do not plan to hold a public meeting, but we will consider doing so if public comments indicate that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

## II. Abbreviations

BLS Bureau of Labor Statistics
CATEX Categorical exclusion
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MMC Merchant Mariner Credential
MMLD Merchant Mariner Licensing Documentation
NMC National Maritime Center
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of proposed rulemaking
PHS Public Health Service
§ Section
U.S.C. United States Code

## III. Basis and Purpose

Under 46 CFR 11.201(c)(2), an applicant for a national officer endorsement on a Merchant Mariner Credential (MMC) ''must have at least 3 months of required service on vessels of appropriate tonnage or horsepower within the 3 years immediately preceding the date of application.'' Section 305 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014 [1] amended 46 U.S.C. 7101 to authorize the Coast Guard to extend the period from 3 years to 7 years for individuals whose 3 months of qualifying sea service was aboard vessels of the uniformed services. Such individuals must also satisfy all other requirements for a national officer endorsement on an MMC. In this notice of proposed rulemaking (NPRM), we propose to establish a 7-year period within which the attainment of 3 months of qualifying sea service aboard vessels of the uniformed services can be used to satisfy the requirement for recent sea service to qualify for an MMC with a national officer endorsement. This NPRM would affect only 46 CFR part 11, ''Requirements for officer endorsements,'' and, specifically, only 46 CFR 11.201(c)(2).

[1] Public Law 113–281, 128 Stat. 3022 (2014).

## IV. Background

Individuals serving on vessels of the uniformed services represent a population who may be qualified for an MMC. When these individuals spend the final years of their careers assigned to shoreside units, the requirement in 46 CFR 11.201(c)(2) to have at least 3 months of qualifying sea service within 3 years of application for an officer endorsement poses an obstacle to meeting the requirement for recent sea service. This rule will improve the pathway for individuals with sea service aboard vessels of the uniformed services to meet the requirement for recent sea service to qualify for a national officer endorsement.

On December 18, 2014, Congress amended 46 U.S.C. 7101 by adding paragraph (j), which authorized the Coast Guard to extend the period from 3 years to 7 years for individuals whose 3 months of qualifying sea service was aboard vessels of the uniformed services. Subsequent to enactment of 46 U.S.C. 7101(j)(1), the Coast Guard issued CG–CVC Policy Letter 15–03, ''Crediting Recent Service of Uniformed Service Personnel,'' [2] on October 16, 2015 to implement 46 U.S.C. 7101(j)(1) until a rulemaking could be completed.

## V. Discussion of Proposed Rule

In accordance with 46 U.S.C. 7101(j)(1), we propose to amend 46 CFR 11.201(c)(2) to allow individuals who have attained qualifying sea service aboard vessels of the uniformed services within 7 years preceding the date of application for a national officer endorsement to use this service to satisfy the requirement for recent sea service. Because the existing regulatory language in 46 CFR 11.201(c)(2) requires qualifying sea service to be attained within a 3-year period preceding the date of application, a regulatory change is needed to align our regulations with the authority granted in 46 U.S.C. 7101(j)(1).

[2] CG-CVC Policy Letter 15-03 can be accessed here: *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/CG-CVC/Policy%20Letters/2015/CG-CVC_pol15-03.pdf.*

## VI. Request for Public Input

In addition to seeking public comment on the proposed change described above, the Coast Guard also seeks comment from the public on the following questions:

(1) Should the period for ''recent'' service be extended to 7 years for all national officer endorsements?

(2) Is it necessary to have a requirement for recent sea service for an original, renewal, or raise of grade of an MMC with a national officer endorsement?

The Coast Guard asks the second question because the Coast Guard has not solicited public comment on the requirement for recent sea service to qualify for an MMC with a national officer endorsement since the 1980s.[3] The Coast Guard is interested in hearing public opinion on whether recent sea service is necessary in addition to the existing sea service requirement for deck officer endorsements under 46 CFR part 11, subpart D, for engineer officer endorsements under subpart E, and for first-class pilot endorsements under subpart G to demonstrate that an applicant has the appropriate experience for the endorsement being sought.

When evaluating whether there is a need for recent sea service for the renewal of an MMC with a national officer endorsement, consideration should be given to the professional requirements an applicant must meet for the renewal of any MMC that are provided under 46 CFR 10.227(e). Under this section, applicants must meet one of the following professional requirements for renewal of an MMC:

(1) Present evidence of 1 year of sea service within the previous 5 years;

(2) Pass a comprehensive open book exercise;

(3) Complete an approved refresher training course;

(4) Provide evidence of closely related service for at least 3 years in the previous 5 years; or

(5) Provide evidence of employment as a qualified instructor having taught two classes in the last 5 years in course work that is relevant to the credential sought.

The comments we receive in response to the questions above may form the basis for a separate rulemaking in the future.

## VII. Regulatory Analyses

We developed this NPRM after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this proposed rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

A combined preliminary regulatory analysis and threshold regulatory flexibility analysis follows and provides an evaluation of the economic impacts associated with this NPRM.

This NPRM would revise existing regulations related to the requirement for recent sea service to qualify for an MMC with a national officer endorsement. Specifically, this NPRM proposes to amend 46 CFR 11.201(c)(2) by establishing a 7-year period within which the attainment of 3 months of qualifying sea service aboard vessels of the uniformed services would satisfy the requirement for recent sea service. This proposed change would apply to original and raise of grade national officer endorsement applicants who have served on vessels of the uniformed services.[4] Under 10 U.S.C. 101(a)(5), ''uniformed services'' means the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA), and the commissioned corps of the Public Health Service (PHS). To estimate the impacts that the proposed increase in timeframe for which the attainment of 3 months of qualifying sea service can be used to satisfy the requirement for recent sea service, we examined data on officer endorsement applications provided by the National Maritime Center (NMC).

This proposed rule intends to increase the number of qualified applicants for a national officer endorsement, which would subsequently increase the pool of credentialed mariners supporting U.S. commerce and the growth of the marine transportation system. However, after examining the existing data it was not possible to estimate the extent of any increases. Information provided by the NMC from the Merchant Mariner Licensing Documentation (MMLD) system was used to estimate the number of mariners that may be affected by this proposed rule. The data available from 2016 to 2018 indicates that applicants for an original endorsement or raise of grade to an existing endorsement may be able to utilize previous sea service on vessels of the uniformed services to meet the professional requirements for a national officer endorsement. Meeting the requirements for an original officer endorsement may allow a mariner to be employed at a higher initial wage rate. We present an analysis of the potential positive distributional impacts (qualitative) on mariners in the benefits section.

This NPRM proposes to increase the period from 3 years to 7 years, within which qualifying sea service aboard vessels of the uniformed services can be used to satisfy the requirement for recent sea service to qualify for an MMC with a national officer endorsement. The Coast Guard cannot conclusively estimate the impact of increasing the period from 3 years to 7 years on the number of total qualified merchant mariners. Although the annual average number of original and raise of grade national officer endorsements is decreasing, the number of individuals

[3] 46 FR 53624 (ANPRM) and 48 FR 35920 (NPRM).

[4] As stated in 46 CFR 10.225, ''original'' is the first credential issued to an applicant; the first credential issued to applicants after their previous credential has expired beyond the grace period and they do not hold a Document of Continuity under 46 CFR 10.227(g) or an equivalent unexpired continuity endorsement on their license or MMD; or the first credential issued to applicants after their previous credential was revoked pursuant to 46 CFR 10.235. As stated in 46 CFR part 10.107, ''raise of grade'' means an increase in the level of authority and responsibility associated with an officer or rating endorsement, such as from mate to master or second assistant engineer to first assistant engineer.

using prior service on vessels of the uniformed services is increasing, based on data from between 2016 and 2018. We are also unable to determine the source of the increase in national officer endorsements issued with sea service on vessels of the uniformed services; therefore, we did not estimate costs (see table 1).

TABLE 1—SUMMARY OF THE IMPACTS OF THE NPRM

| Category | Summary |
|---|---|
| Applicability | Amend requirement in 46 CFR 11.201(c)(2) to 3 months of qualifying sea service within 7 years of application for a national officer endorsement for individuals who have service on vessels of the uniformed services. |
| Potentially Affected Population | Based on a historical estimate of the proportion of individuals who used prior service on vessels of the uniformed services to the number of original and raise of grade national officer endorsements issued between 2016 and 2018, we estimate that about 516 prospective mariners may apply annually for an MMC with a national officer endorsement utilizing service on vessels of the uniformed services. However, the data did not allow us to conclusively estimate the increase in mariners due to annual fluctuations in the applications as a result of factors external to this rule. |
| Costs | No costs estimated because this proposed rule would only provide increasing flexibility for qualified merchant mariners. Unit costs for individuals would be the evaluation, examination, and issuance fees for an MMC that range from $45–$110 for a total unit cost of $255 for each individual, and the labor time it takes to fill out the forms at the respective loaded mean hourly wage rates and submission to the NMC, which range from 5 to 18 minutes. The loaded mean hourly wage rates for individuals range from $26.99 to $57.95. |
| Unquantified Benefits | • Potential for an increased pool of qualified mariners supporting U.S. commerce and the growth of the marine transportation system.<br>• Potential for an increase in the number of job opportunities for individuals who have served on vessels of the uniformed services.<br>• Potential for an increase in the starting wage rate for Mariners who would now qualify for a national officer endorsement. |

**Note:** Please see the benefit section of this analysis for the wage rates in this table.

Affected Population

46 U.S.C. 7101(j)(1) applies to applicants that have three months of qualifying service on vessels of the uniformed services within the seven years immediately preceding the date of application. The pool of applicants consists of, and this NPRM would affect, current and former members of the U.S. armed forces,[5] the commissioned corps of NOAA and PHS, and civilians who attained qualifying sea service aboard vessels of the uniformed services within 7 years preceding the date of application for a national officer endorsement. There are approximately 1.33 million military personnel serving in the U.S. armed forces, 681,000 personnel serving in the Reserve [6] and approximately 727,000 civilians employed by the armed and uniformed services.[7] [8] [9] To estimate the number of people potentially affected by this NPRM, we examined data provided by the NMC. The NMC evaluates MMC applications and issues credentials to qualified mariners. As noted in section IV, on December 18, 2014, Congress amended 46 U.S.C. 7101 to authorize the Coast Guard to extend the period by which a mariner can obtain 3 months of qualifying sea service aboard vessels of the uniformed services from 3 years to 7 years to satisfy the requirement for recent sea service. Following that, in October 2015, CG–CVC Policy Letter 15–03 was published to implement 46 U.S.C. 7101(j)(1) on an interim basis until the Coast Guard could complete a rulemaking. This analysis utilized Coast Guard data from the MMLD database on all original and raise of grade national officer endorsements issued beginning in 2010, and original and raise of grade national officer endorsements issued utilizing prior sea service on vessels of the uniformed services beginning in 2016. In 2016, the NMC began identifying applications utilizing prior service aboard vessels of the uniformed services to meet the requirement for recent sea service under 46 CFR 11.201(c)(2). The data spans from January 2016 through December 2018 to include 36 months (unless otherwise noted). Therefore, given the data availability, we use the statistical baseline of 2016 for this analysis. The observations are as follows:

(1) The annual average number of original and raise of grade national officer endorsements issued is 7,203 (as observed from 2010–2018). In Figure 1, we show the results of our observation of historical data indicating that the number of annual officer endorsements issued from 2010–2018 is on a downward trend.

(2) In 2016, there were 7,165 original and raise of grade national officer endorsements issued,[10] of which 356 used prior service on vessels of the uniformed services to meet the requirements for the endorsement.[11] This is equivalent to approximately five percent (356 ÷ 7,165). In 2017, there were 6,330 original and raise of grade national officer endorsements issued, of which 495 used prior service on vessels

[5] Under 10 U.S.C. 101(a)(4), the U.S. armed forces includes the Air Force, Army, Coast Guard, Navy, and Marines Corps.

[6] The Reserve consists of the Army National Guard, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard, the Coast Guard Reserve, and the Air Force Reserve.

[7] Armed forces civilian personnel data from *https://www.census.gov/library/publications/2011/compendia/statab/131ed/national-security-veterans-affairs.html,* accessed March 26, 2019.

Armed forces and Reserves population data from *https://www.cna.org/pop-rep/2016/summary/summary.pdf,* accessed March 26, 2019.

U.S. PHS public data, accessed 20 August 2018, *https://usphs.gov/aboutus/leadership.aspx.*

NOAA public data, accessed July 14, 2018, *https://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll.* To access, use the following path: FSe—Employment Generic, Employment—March 2018 Generic, Agency—All Agencies, CM54—National Oceanic and Atmospheric Administration. This link is only accessible by a government computer.

[8] As stated in CG–CVC Policy Letter No. 15–03, section (4)(a)(3), this would also apply to civilian mariners working aboard vessels of the uniformed services. For example, the more-than-5,000 civil servant mariners who work aboard Military Sealift Command vessels, the union contract mariners who sail aboard NOAA vessels, and the Navy-owned prepositioning vessels.

[9] There are approximately 709,265 DoD civilian personnel, 6,500 PHS personnel, and 11,268 NOAA personnel. 709,265 + 6,500 + 11,268 = 727,033, which is rounded to 727,000.

[10] Both original and raise of grade.

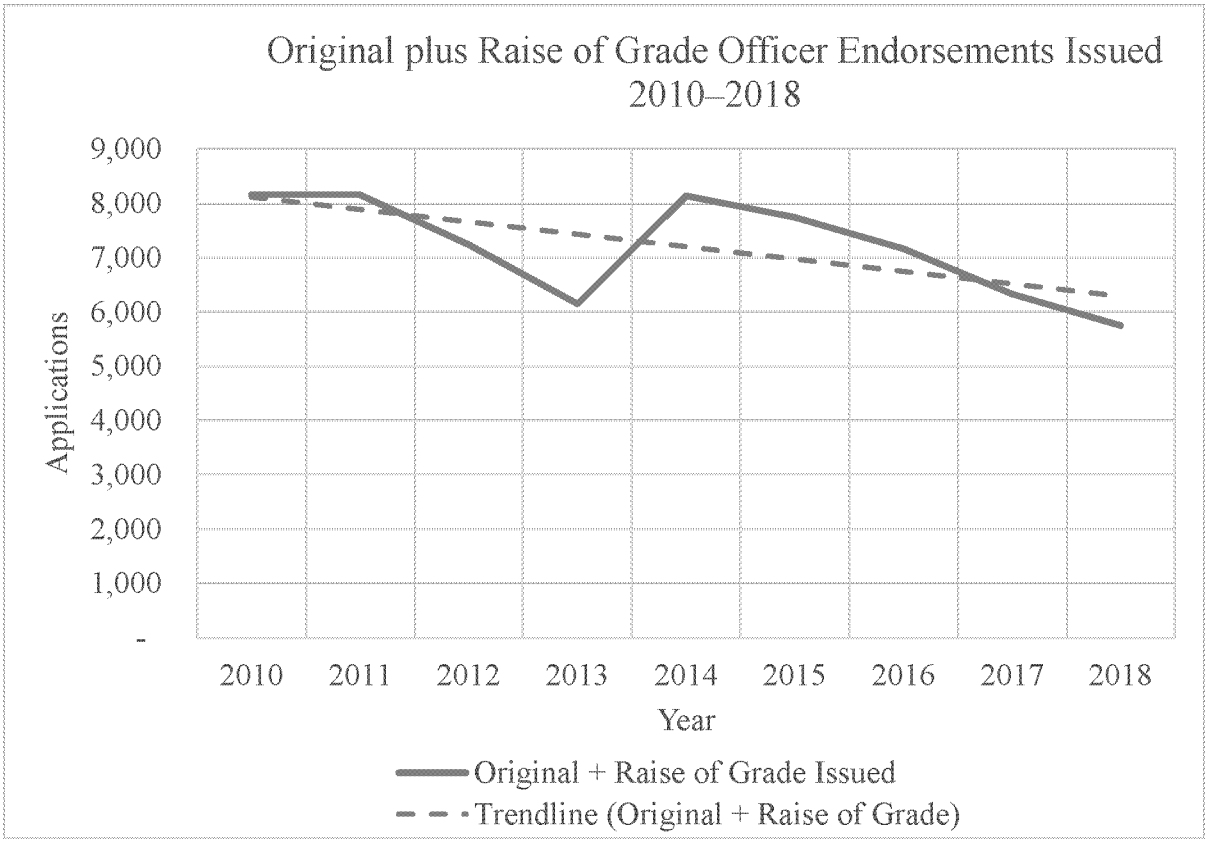
[11] Qualification meaning prior service on vessels of the uniformed services to meet the requirement for recent sea service to qualify for a national officer endorsement.

of the uniformed services to meet the requirements for the endorsement. This is equivalent to approximately 7.8 percent (495 ÷ 6,330). In 2018, there were 5,748 original and raise of grade national officer endorsements issued, of which 501 used prior service on vessels of the uniformed services to meet the requirements for the endorsement. This is equivalent to approximately 8.7 percent (501 ÷ 5,748).

(3) The average percentage of original and raise of grade national officer endorsements issued using prior sea service aboard vessels of the uniformed services is about 7.2 percent ([0.05 + 0.078 + 0.087] ÷ 3 = 0.072 or 7.2 percent).

(4) Using the figure derived in (1) and the figure derived in (3), the Coast Guard found the average number of (estimated) national officer endorsements using prior sea service aboard vessels of the uniformed services to be 516 per year (7,203 average annual number of national officer endorsements issued × 0.072 percentage of national officer endorsements issued using prior sea service on vessels of the uniformed services).[12]

**Figure 1. Annual Number of Original and Raise of Grade National Officer Endorsements Issued by Year**




Costs Analysis

This NPRM would amend 46 CFR 11.201(c)(2) and establish a 7-year period within which the attainment of 3 months of qualifying sea service aboard vessels of the uniformed services could be used to satisfy the requirement for recent sea service to qualify for a national officer endorsement. Following the publication of CG–CVC Policy Letter 15–03, the Coast Guard anticipated an increase in the total number of MMCs issued with original or raise of grade national officer endorsements. In 2016, the NMC began collecting data on the number of applicants using prior sea service aboard vessels of the uniformed service.[13] As shown in table 2, the total number of national officer endorsements issued, either original or raise of grade, decreased approximately 20 percent from 2016 to 2018. However, the number of national officer endorsements issued, either original or raise of grade, that utilized sea service on vessels of the uniformed services increased approximately 29 percent.

[12] Slight errors may be due to rounding.

[13] The data is available for years 2016–2018, which leads to a baseline year of 2016.

TABLE 2—NATIONAL OFFICER ENDORSEMENTS ISSUED (2016–2018)

| Year | 2016 | 2017 | 2018 |
|---|---|---|---|
| **National Officer Endorsements Issued—Original and Raise of Grade** | | | |
| Applications | 7,165 | 6,330 | 5,748 |
| **National Officer Endorsements Issued With Service on Vessels of the Uniformed Services—Original and Raise of Grade** | | | |
| Applications | 356 | 495 | 501 |

As stated previously, this proposed rule expects to increase the number of qualified applicants for a national officer endorsements that would ultimately lead to an increase in the number of credentialed mariners. However, even with the increase in the national officer endorsements issued utilizing sea service on vessels of the uniformed services, the decrease in national officer endorsements issued from 2010–2018 is significant enough to conclude that the population of credentialed mariners is decreasing.

In addition, due to data limitations described above, we cannot ascertain if the increase in national officer endorsements issued with sea service on vessels of the uniformed services from 2016–2018 was due to applicants utilizing sea service on vessels of the uniformed services resulting from CG–CVC Policy Letter 15–03 or if it was just part of the annual fluctuations in applications.

As a result, we cannot estimate the impact of CG–CVC Policy Letter 15–03 on the number of original or raise of grade national officer endorsements issued, and we cannot conclusively estimate the impact of this proposed rulemaking on the number of total qualified merchant mariners. Without being able to estimate the increase in the number of original or raise of grade national officer endorsements issued utilizing prior service on vessels of the uniformed services as directly related to CG–CVC Policy Letter 15–03, we cannot assign costs to this proposed rule. The fees associated with an application for an MMC are established in 46 CFR 10.219. The fees for an original or raise of grade national officer endorsement include evaluation, examination, and issuance fees ranging from $45–$110. We also estimate it takes a mariner between 5 and 18 minutes (based on NMC's OMB-approved Information Collection Request (ICR), with a control number of 1625–0040) at a respective mariner's loaded hourly wage rate (see Table 1) to fill out the MMC application for submission to the NMC. However, because we would extend the period of time a mariner has to attain 3 months of qualifying sea service aboard vessels of the uniformed services, which is current industry practice, there is no cost associated with this proposed change.

Because we cannot estimate the impact on the number of national officer endorsements issued related to CG–CVC Policy Letter 15–03, we also cannot estimate the government costs associated with this rulemaking. It normally takes a Coast Guard evaluator at the GS–8 level with a loaded mean hourly wage of $49 approximately 45 minutes to review the MMC application and associated documentation for a unit cost of about $36.75.[14] Government costs would result if there were an increase in applications for MMCs or if the time to evaluate the application changed from the estimated time in the ICR with a control number of 1625–0040. This would be realized at the NMC where applications for MMCs are evaluated and credentials are issued.

Benefits

This NPRM would align the regulations in 46 CFR 11.201(c) with the authority granted in 46 U.S.C. 7101(j)(1) with no negative economic impact on the affected population. As mentioned earlier in this document, the Coast Guard issued CG–CVC Policy Letter 15–03 to implement 46 U.S.C. 7101(j)(1) on an interim basis until a rulemaking could be completed. Without the regulatory change proposed by this NPRM, our regulations would not reflect the most up-to-date sea service standard specifically authorized under 46 U.S.C. 7101(j)(1). Accordingly, this NPRM helps avoid confusion by ensuring the most up-to-date applicable standard is incorporated in the regulation.

The Coast Guard has identified several qualitative benefits for this proposed rule. The proposed regulation would improve the pathways to qualify for an MMC with a national officer endorsement and increase the number of job opportunities for individuals with experience aboard vessels of the uniformed services. This also provides the ability for a larger pool of mariners to enter the workforce at a higher pay rate than they would have realized prior to CG–CVC Policy Letter 15–03. Although there is also a potential for an increase in the pool of applicants, at this time, the data does not allow us to estimate this impact. While there was a 29 percent increase in the number of original and raise of grade national officer endorsements issued utilizing prior sea service on vessels of the uniformed services, there was a corresponding 20 percent decrease in the number of original and raise of grade national officer endorsements issued that did not utilize prior sea service from 2016–2018. The 20 percent decrease is a more significant indication of the annual credentialing trend as compared to the 29 percent increase to the population that did use prior sea service as part of their application. At this time, the data is not robust enough to allow us to estimate the impact of CG–CVC Policy Letter 15–03 on the number of original and raise of grade national officer endorsements issued. The Coast Guard requests data, input, and comments from the general public and interested stakeholders regarding the potential of an increase in applicants due to this proposed rule.

Providing a method for individuals to use recent sea service on vessels of the uniformed services to qualify for an MMC with a national officer endorsement could result in the opportunity for them to be initially employed at a higher pay rate, which leads to the possibility of favorable wage impacts to the mariner. Below we describe the potential increase in wages to the mariner resulting from having previous service on vessels of the uniformed services.

To estimate the potential wage impacts to the mariner, we compared the shipboard wage rates for an individual with an MMC with an officer endorsement to that of an individual with an MMC with a rating endorsement. The job categories for individuals with an officer endorsement as defined by the Bureau of Labor

[14] Information provided by the National Maritime Center. The mean hourly wage rate for a GS–8 employee is $49, ''Outside Government Rate'', per Commandant Instruction 7310.1T, November 2018.

Statistics (BLS) are as follows: (1) Deck Officers, to include captains, mates, and pilots for water vessels; and (2) Engine Officers, to include ship engineers. The job categories for ratings are as follows: (1) Deck including sailors, and (2) Engine including marine oilers. If an applicant was unable to meet the existing 3-year requirement for recent sea service to qualify for an MMC with a national officer endorsement, they may seek employment as a rating to obtain recent sea service.[15] [16] Ratings are employed at a lower rage rate than officers. Tables 3 and 4 show the calculation for the loaded wage factor and the loaded wage rate for each personnel category. As described in table 4, individuals who do not hold an officer endorsement are classified as a rating paid at a lower wage than those that have an officer endorsement aboard a vessel. To meet the requirement for 3 months of recent sea service for an MMC with a national officer endorsement, an individual would have to spend that time employed as a rating aboard a vessel.

TABLE 3—LOADED WAGE FACTOR CALCULATION

| Personnel category | Data source | Total compensation | Wage & salaries | Loaded wage factor |
|---|---|---|---|---|
| All Workers Private Industry. | BLS Employer Costs for Employee Compensation, all workers private industry, service providing, production, transportation and materials moving. | $26.99 | $18.13 | 1.489 |

TABLE 4—LOADED WAGE CALCULATION

| Personnel category | Data source | Mean hourly wage | Loaded wage factor | Loaded wage ($2017) |
|---|---|---|---|---|
| Deck Officers | Wage Rate: 2017 mean hourly wage for Captains, Mates, and Pilots of Water Vessels. | $38.93 | 1.489 | $57.95 |
| Engine Officers | Wage Rate: 2017 mean hourly wage for Ship Engineers | 37.48 | 1.489 | 55.80 |
| Deck and Engine Ratings. | Wage Rate: 2017 mean hourly wage for Sailors and Marine Oilers | 22.38 | 1.489 | 33.32 |

* Numbers may not sum due to independent rounding.

We estimate the loaded [17] hourly wage rate of Deck Officers to be $57.95 and $55.80 for Engine Officers. This equates to an average loaded mean hourly wage rate for officers of $56.88.[18] We estimate the loaded mean hourly wage rate of Deck and Engine ratings to be $33.32.[19] [20]

To obtain the wage difference for the period a person would need to work as a rating on board a vessel to obtain recent sea service to qualify for a national officer endorsement, we must first calculate the 3-month wage for a rating, then calculate the 3-month wage for an officer, and then calculate the difference. We estimated the working hours in a 3-month, or 90-day period, to be 720 hours (90 working days, including weekends, multiplied by 8-hour working days).[21]

Using the calculated loaded mean hourly wage rate for Deck and Engine ratings, the Coast Guard calculated the total wages for a 3-month time period to be $23,988.20 ($33.32 × 720). Using the calculated average loaded mean hourly wage rate for officers, we calculated the total wages for a 3-month time period to be $40,950.37 ($56.88 × 720).[22] We can then calculate the loss in wages from being unable to qualify for an MMC with a national officer endorsement for a 3-month period. The difference in wages totals $16,962.17 ($40,950.37 − $23,988.20) per mariner. See table 5 below.

TABLE 5—90-DAY WAGE DIFFERENCE

| Personnel category | Loaded mean hourly wage | 90 days in hours | 90 days in wages [23] |
|---|---|---|---|
| Deck and Engine Officers | $56.88 | 720 | $40,950.37 |
| Deck and Engine Ratings | 33.32 | 720 | 23,988.20 |
| Individual Difference (Impact) | ..... | ..... | (16,962.17) |

[15] For officers: *https://www.bls.gov/oes/2017/may/oes535021.htm* and *https://www.bls.gov/oes/2017/may/oes535031.htm;* for ratings: *https://www.bls.gov/oes/2017/may/oes535011.htm.* The mean hourly wage figured is what is used in the calculation.

[16] Currently, there are 45 types of officer endorsements and 12 types of rating endorsements available for an MMC. Because the BLS does not have wage information on all of these endorsement types, these categories were chosen as the best categories to encompass the endorsement types.

[17] Employer Costs for Employee Compensation provides information on the employer compensation and can be found at *https://data.bls.gov/cgi-bin/dsrv?cm.* To calculate the load factor, we used the series ID CMU201S000500000D and CMU202S000500000D using the multi-screen database and 2017 quarter 4. The loaded wage factor is equal to the total compensation of $26.99 divided by the wages and salary of $18.13 ($26.99 ÷ $18.13) = 1.49. Values for the total compensation, wages, and salary are for all private industry workers in the transportation and material moving occupations, 2017 4th quarter. We use 2017 data to keep estimated benefits in 2017 dollars.

[18] To get the average loaded hourly labor rate for ratings, the calculation is ($57.95 + $55.80) ÷ 2 = $56.88.

[19] All wage rates are in 2017 dollars.

[20] Slight calculation adjustments may occur due to rounding.

[21] Per the subject matter expert, the working hours would be 7 days a week, 8 hours per day.

[22] Slight calculation adjustments may occur due to rounding.

In summary, we were unable to estimate the impact of this rule on the number of merchant mariners available for employment on commercial vessels. By increasing the period to meet the requirement for recent sea service to qualify for an MMC with a national officer endorsement, an individual forgoes having to work at a lower pay rate to obtain the prerequisite service for an officer endorsement. The result is a potential increase in the entry wage rate for the applicant, which could lead to an improved quality of life for the mariners who would now qualify for an MMC with a national officer endorsement.

Regulatory Alternative Considered

In developing this NPRM, the Coast Guard considered the following alternative to the proposed rule: Continuing to allow the extended period for recent sea service as provided in CG–CVC Policy Letter 15–03. We rejected this alternative. In enacting Section 305 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Congress expressly authorized the Secretary to extend the period for recent sea service from 3 years to 7 years for individuals whose sea service was aboard vessels of the uniformed services. Accordingly, the Coast Guard is taking action, through rulemaking, to make the regulatory language consistent with the legislative authority. Absent a regulatory change, 46 CFR 11.201 would not align with 46 U.S.C. 7101(j)(1).

There are no other feasible alternatives. Because the existing regulatory language in 46 CFR 11.201(c)(2) requires qualifying sea service to be attained within a 3-year period preceding the date of application for all applicants, a regulatory change is needed to implement 46 U.S.C. 7101(j)(1).

*B. Small Entities*

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard has not identified any small entities that would be directly regulated by the proposed rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this proposed rule. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

*C. Assistance for Small Entities*

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

*D. Collection of Information*

This proposed rule would call for no new collection of information tasks under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Because the data indicates that this proposed rule would not result in an increase in the number of applicants, it would not add respondents for recording and recordkeeping to the existing collection (OMB Control Number 1625–0040), ''Application for Merchant Mariner Credential (MMC), Application for Merchant Mariner Medical Certificate, Application for Merchant Mariner Medical Certificate for Entry Level Ratings, Small Vessel Sea Service Form, DOT/USCG Periodic Drug Testing Form, Disclosure Statement for Narcotics, DWI/DUI, and/or Other Convictions, Merchant Mariner Medical Certificate, Recognition of Foreign Certificate.''

*E. Federalism*

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000). Because this proposed rule involves the credentialing of mariners under 46 U.S.C. 7101, it relates to personnel qualifications and is therefore foreclosed from regulation by the States. Therefore, because the States may not regulate within this category, this proposed rule is consistent with the fundamental federalism principles and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this proposed rule would have implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this NPRM.

*F. Unfunded Mandates*

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

[23] Figures may not add due to rounding.

discuss the effects of this proposed rule elsewhere in this preamble.

*G. Taking of Private Property*

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

*H. Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

*I. Protection of Children*

The Coast Guard has analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*K. Energy Effects*

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, the Coast Guard did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f). We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule appears to meet the criteria for categorical exclusion (CATEX) under paragraphs A3(d) and L54 in Appendix A, Table 1 of DHS Directive 023–01 (series). CATEX A3 pertains to the promulgation of rules and procedures that are: (d) ''those that interpret or amend an existing regulation without changing its environmental effect'' and CATEX A3 also pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel. This rule proposes to revise mariner credentialing requirements to implement 46 U.S.C. 7101(j)(1) without substantive change. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 46 CFR Part 11**

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 11 as follows:

## PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

■ 2. Amend § 11.201 as follows:
■ a. Redesignate paragraph (c)(1) as paragraph (c) introductory text and revise the newly redesignated paragraph (c) introductory text;
■ b. Redesignate paragraphs (c)(2) through (c)(6) as (c)(1) to (c)(5); and
■ c. Revise newly redesignated (c)(1).

The revisions to read as follows:

**§ 11.201 General requirements for national and STCW officer endorsements.**

* * * * *

(c) *Experience and service.* Applicants for officer endorsements should refer to § 10.232 of this subchapter for information regarding requirements for documentation and proof of sea service.

(1) An applicant for a national officer endorsement must meet one of the following:

(i) Have at least 3 months of required service on vessels of appropriate tonnage or horsepower within the 3 years immediately preceding the date of application; or

(ii) Have at least 3 months of required service on vessels of the uniformed services as defined in 10 U.S.C. 101(a)(5) of appropriate tonnage or horsepower within the 7 years immediately preceding the date of application; or

(iii) Have at least 3 months of required service attained through a combination of service established under paragraphs (c)(1)(i) or (ii) of this section.

* * * * *

Dated: September 6, 2019.

**R.V. Timme,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.*

[FR Doc. 2019–19754 Filed 9–16–19; 8:45 am]

**BILLING CODE 9110–04–P**

## FEDERAL MARITIME COMMISSION

**46 CFR Part 545**

**[Docket No. 19–05]**

**RIN 3072–AC76**

## Interpretive Rule on Demurrage and Detention Under the Shipping Act

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission is seeking public comment on its interpretation of the Shipping Act prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling,

storing, or delivering property with respect to demurrage and detention. Specifically, the Commission is providing guidance as to what it will consider in assessing whether a demurrage or detention practice is unjust or unreasonable.

**DATES:** *Submit comments on or before:* October 17, 2019.

**ADDRESSES:** You may submit comments, identified by the Docket No. 19–05 by the following methods:

- *Email: secretary@fmc.gov.* Include in the subject line: ''Docket 19–05, Demurrage & Detention Comments.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.
- *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.
- *Instructions:* For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.
- *Docket:* For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: *https://www2.fmc.gov/readingroom/proceeding/19-05/,* or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

In 2018, the Commission initiated a non-adjudicatory fact-finding investigation, Fact Finding Investigation No. 28, into the conditions and practices relating to detention, demurrage, and free time.[1] On December 7, 2019, the Commission voted to accept the investigation's Final Report, in which the Fact-Finding Officer found that:

- Demurrage and detention are valuable charges when applied in ways that incentivize cargo interests to move cargo promptly from ports and marine terminals;
- All international supply chain actors could benefit from transparent, consistent, and reasonable demurrage and detention practices, which would improve throughput velocity at U.S. ports, allow for more efficient use of business assets, and result in administrative savings; and
- Focusing port and marine terminal operations on notice of actual cargo availability would achieve the goals of demurrage and detention practices and improve the performance of the international commercial supply chain.[2]

Based on the Fact Finding's Final Report, Interim Report,[3] and investigatory record, the Commission is considering incorporating those findings in guidance as to the Commission's interpretation of 46 U.S.C. 41102(c) and 46 CFR 545.4(d) in the context of demurrage and detention. Although each § 41102(c) case would continue to be decided on the particular facts of the case, the Commission believes that guidance in the form of a non-exclusive list of considerations will promote fluidity in the U.S. freight delivery system by ensuring that demurrage and detention serve their purpose of incentivizing cargo and equipment velocity. The proposed interpretive rule will also mitigate confusion, reduce and streamline disputes, and enhance competition and innovation in business operations and policies. The Commission is issuing this notice to obtain public comments on this guidance.

## II. Background

This notice of proposed rulemaking arises from the Commission's Fact Finding Investigation No. 28, which itself derived from repeated criticisms of ocean carrier and marine terminal operator demurrage and detention practices.[4] The investigation was nationwide and industry-wide in scope and involved thousands of pages of written discovery and interviews with numerous representatives of cargo interests (shippers and consignees), truckers, ocean transportation intermediaries, ocean carriers, marine terminal operators, and ports.[5]

The Fact-Finding Officer found that the primary purposes of demurrage and detention are to serve as financial incentives to encourage the productive use of assets (containers and terminal space) and promote optimal cargo velocity through marine terminals.[6] The Fact Finding Officer further found that the U.S. international ocean freight delivery system, and American economy, would benefit from: (1) ''Transparent, standardized language for demurrage and detention practices;'' (2) ''Clear, simplified, and accessible demurrage and detention billing practices and dispute resolution processes;'' (3) ''Explicit guidance regarding the types of evidence relevant to resolving demurrage and detention disputes;'' and (4) ''Consistent notice to cargo interests of container availability.'' [7]

## III. Summary of Proposed Guidance

The guidance proposed by the Commission is in the form of an interpretive rule.[8] The proposed rule concerns financial incentives, particularly with respect to cargo availability, empty container return, notice of availability, and government inspections; accessible and user-friendly demurrage and detention policies; and transparent, consistent terminology. The following consists of the text of the proposed rule and comments on each subparagraph.

### *A. Purpose and Scope of Proposed Rule*

The Commission's proposed rule would first specify that its purpose is to provide guidance about how the

[1] Fact Finding Investigation No. 28 Order of Investigation (Mar. 5, 2018) (''Order of Investigation''), *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/ff-28_ord2.pdf/.*

[2] Fact Finding Investigation No. 28 Final Report (''Final Report''), *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF-28_FR.pdf/.*

[3] Fact Finding Investigation No. 28 Interim Report (''Interim Report''), *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF28_int_rpt2.pdf/.*

[4] *See, e.g.,* Coalition for Fair Port Practices Petition for Rulemaking, FMC Dkt. No. P4–16 (Dec. 7, 2016), *https://www2.fmc.gov/readingroom/docs/P4-16/P4-16_petition.pdf/;* Fed. Mar. Comm'n, *U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences, and Challenges* (July 2015), *https://www.fmc.gov/wp-content/uploads/2019/04/PortForumReport_FINALwebAll.pdf;* (Fed. Mar. Comm'n *Report: Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving Through Selected United States Ports* (Apr. 3, 2015), *https://www.fmc.gov/wp-content/uploads/2019/04/reportdemurrage.pdf.*

[5] Interim Report at 4–5; Final Report at 7–9, 11; Fact Finding Investigation No. 28 Order (Dec. 17, 2018), *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF-28_Ord.pdf/.*

[6] *See* Final Report at 28–29.

[7] Final Report at 32. Although not the subject of this rulemaking, current variations in chassis supply models have frequently contributed to serious inefficiencies in the freight delivery system. Timely and reliable access to roadworthy chassis is a source of ongoing and systemic stress to the system.

[8] An interpretive rule is an agency rule that clarifies or explains existing laws or regulations.

Commission will interpret 46 U.S.C. 41102(c) and 46 CFR 545.4(d) in the context of demurrage and detention The proposed interpretive rule would also make clear that it applies to practices and regulations relating to demurrage and detention for containerized cargo. For purposes of this rule, demurrage and detention would include any charges, including ''per diem,'' assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries (''regulated entities'') related to the use of marine terminal space (*e.g.,* land) or shipping containers, not including freight charges.

As for the scope and applicability of the proposed rule, first, it defines ''demurrage and detention'' broadly to encompass all charges customarily referred to as demurrage, detention, or per diem, however defined.[9] Second, the proposed rule would only apply to containerized cargo, including refrigerated (''reefer'') containers. Third, the proposed rule makes clear that it applies to charges related to shipping containers, not other equipment, such as chassis.[10]

*B. Incentive Principle*

1. General Incentive Approach

The Commission proposes that in assessing the reasonableness of demurrage and detention practices and regulations, it will consider the extent to which demurrage and detention are serving their intended purposes as financial incentives to promote freight fluidity.

To pass muster under § 41102(c), ''a regulation or practice must be tailored to meet its intended purpose.'' [11] The intended purposes of demurrage and detention charges are to incentivize cargo movement and the productive use of assets (containers and port or terminal land)—a point which ocean carriers and marine terminal operators have repeatedly emphasized to the Commission.[12] The ''incentive principle'' in the proposed rule is merely an application of the general § 41102(c) reasonableness standard to the demurrage and detention context.

As Fact-Finding Investigation No. 28 made clear, demurrage and detention are valuable charges when they work—when they are applied in ways that incentivize cargo interests to move cargo promptly from ports and marine terminals.[13] When circumstances are such that demurrage and detention do not work, *i.e.,* when they do not incentivize cargo movement and productive asset use, there is cause to question the reasonableness of their application. For instance, if a cargo interest or its trucker cannot retrieve cargo from a marine terminal because the cargo is not available for retrieval due to circumstances such as weather, port or terminal closures, the container is in a closed area, or government inspections of the cargo, demurrage would not serve as an effective incentive for cargo retrieval.

The proposed rule states the incentive principle in general terms, but its application will vary depending on the facts of a given case. For example, under the incentive principle, absent extenuating circumstances, demurrage and detention practices and regulations that do not provide for a suspension of charges when circumstances are such that demurrage and detention are incapable of serving their purpose would likely be found unreasonable.[14] An example of an extenuating circumstance is whether a cargo interest has complied with its customary responsibilities, especially regarding cargo retrieval (*e.g.,* making appointments, paying freight, submitting required paperwork, retaining a trucker). If it has not, this could be factored into the analysis. Another application of the incentive principle is if cargo cannot be retrieved, or empty containers cannot be returned, due to a lack of appointments, demurrage and detention cannot incentivize cargo retrieval or equipment return. The Commission may therefore consider in the reasonableness analysis how demurrage and detention practices and regulations account for the availability of appointments.

Particularly significant applications of the incentive principle involve cargo availability, empty container return, notice of cargo availability, and government inspections, as set forth below.

2. Cargo Availability

As for particular applications of the ''incentive principle,'' the proposed interpretive rule would clarify that the Commission may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.

A particularly important context for the incentive principle, and one given its own subparagraph in the proposed rule, is cargo availability. If cargo interests or truckers cannot pick up their cargo within free time, then demurrage cannot serve its incentive purpose. Cargo availability is key to demurrage serving its intended function, and thus the Commission may consider the relationship between demurrage and cargo availability in its analysis under 46 U.S.C. 41102(c).[15] The more a demurrage practice is tailored to cargo availability, the less likely the practice is to be found unreasonable.

In this context, ''cargo availability'' or ''accessibility'' refers to the *actual* ability of a cargo interest or trucker to retrieve its cargo. Cargo is not available, for instance, if a cargo interest or trucker cannot pick it up because it is in a closed area of a terminal, or if the port is closed.[16] Examples of demurrage practices that are expressly linked to container availability, and which the Commission would weigh positively in the reasonableness analysis, include: (a) Starting the free time clock upon container availability as opposed to container discharge from a vessel; (b) public notice of terminal yard closures; and (c) stopping a demurrage or free time clock when a container is rendered unavailable, such as upon notice of a yard or terminal closure or when a trucker cannot get an appointment

[9] The definitions of the terms ''demurrage,'' ''detention,'' and ''per diem'' vary among ocean carriers and marine terminal operators. Interim Report at 4 n.3, 5–7; Final Report at 11–12, 30.

[10] Although the Fact-Finding Officer in some contexts defined ''detention'' in terms of ''equipment,'' Interim Report at 5 n.3, the reports discussed containers, *e.g.,* Final Report at 30.

[11] *Distribution Services, Ltd.* v. *Trans-Pac. Freight Conference of Japan and Its Member Lines,* 24 S.R.R. 714, 722 (FMC 1988).

[12] Interim Report at 2–3; Final Report at 12, 13.

[13] *See, e.g.,* Final Report at 3, 32.

[14] There appears to be little appetite for more free time generally, and there is reason to question whether, in some situations, a one-day extension of free time would adequately mitigate one day of cargo unavailability.

[15] *See* Final Report at 3, 26–29; *see also id.* at 32 (''Focusing port and marine terminal operations on notice of actual cargo availability would achieve the goals of demurrage and detention practices and improve the performance of the international commercial supply chain.'').

[16] Final Report at 20. ''A container is in an open area when it is in an area from which it can be retrieved. In contrast, a closed area is a section of a container yard in which a ship is being worked. When a container is in a closed area, it cannot be retrieved for safety and labor reasons.'' Final Report at 16 n.19. Not every marine terminal has open and closed areas. *Id.* Another things that might impact availability is whether a trucker has access to a terminal (*e.g.,* has an appointment and there is an absence of congestion). Final Report at 20. During the investigation, some suggested that a container should be deemed unavailable if the wait for truckers outside the terminal gate is longer than fifteen minutes or the total wait time for truckers (inside and outside the terminal gate) exceeds ninety minutes.

within a reasonable time of it becoming available.[17]

3. Empty Container Return

The proposed interpretive rule would also indicate that absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.

The flip side of cargo availability is empty container return. Absent extenuating circumstances, practices and regulations that result in detention being imposed when a container cannot be returned weigh heavily in favor of a finding of unreasonableness. The paradigmatic example is that if the marine terminal designated by an ocean carrier refuses to accept empty containers, no amount of detention can incentivize the return of those containers. Absent extenuating circumstances, assessing detention in such situations, or declining to pause the free time or detention clock, would likely be unreasonable. Imposing detention in situations of uncommunicated or untimely communicated changes in container return location also weighs on the side of unreasonableness, as might doing so when there have been uncommunicated or untimely communicated notice of terminal closures for empties.

4. Notice of Cargo Availability

Additionally, the Commission would clarify that in assessing the reasonableness of demurrage practices and regulations, it may consider whether and how regulated entities provide notice to cargo interests that cargo is available for retrieval. The Commission would consider the type of notice, to whom notice is provided, the format of notice, method of distribution of notice, the timing of notice, and the effect of the notice.

This subparagraph promotes aligning cargo retrieval processes around notice that cargo is available.[18] The Commission will consider in the reasonableness analysis whether and how regulated entities provide notice to cargo interests that cargo is available for retrieval. The more notice is calculated to apprise cargo interests that cargo is available for retrieval, the more this factor favors a finding of reasonableness.

The Commission may consider the *type* of notice. Types of notice that are expressly linked to cargo availability will weigh toward reasonableness, and include: (a) Notice that cargo is discharged and in an open area; (b) notice that cargo is discharged, in an open area, free of holds, and proper paperwork has been submitted; and (c) notice of all the above and that an appointment is available.

Other factors include *to whom* notice is provided, *the format* and *method of distribution* of notice, the *timing* of notice, and the *effect* of notice. The more these factors align with the goal of moving cargo off terminal property, the less likely demurrage practices would be found unreasonable. For instance, while the Commission appreciates that many marine terminal operators make container status information available on websites and allow users to register to get electronic notice of changes in container status, cargo interests have persuasively explained the superior merits of ''push notifications'' related to cargo availability, including notice of yard closures.[19] Moreover, the Commission will consider how demurrage and detention practices account for cargo availability changes, such as when a container that is initially available becomes unavailable.[20] Regarding the effect of notice, demurrage practices that link the start of free time to notice that a container is available weigh in favor of reasonableness, as do practices that guarantee the availability of an appointment within a specified time of notice of container availability.

5. Government Inspections

The Commission is still considering its guidance related to government inspections of cargo. Imposition of demurrage and detention during government inspections of cargo, and the delays associated with such inspections, is a significant problem for cargo interests and truckers. Such inspections not only involve cargo interests and regulated entities but also government agencies, third-parties, and, in some cases, off-terminal facilities. In light of the incentive principle, the Commission is considering the following interpretive rules:

- In the absence of extenuating circumstances, demurrage and detention practices and regulations that provide for the escalation of demurrage or detention while cargo is undergoing government inspection are likely to be found unreasonable;
- In the absence of extenuating circumstances, demurrage and detention practices and regulations that do not provide for mitigation of demurrage or detention while cargo is undergoing government inspection, such as by waiver or extension of free time, are likely to be found unreasonable; or
- In the absence of extenuating circumstances, demurrage and detention practices and regulations that lack a cap on the amount of demurrage or detention that may be imposed while cargo is undergoing government inspection are likely to be found unreasonable.

The Commission is particularly interested in comments on such proposals and other suggestions for handling demurrage and detention in the context of government inspections, consistent with the incentive principle.

*C. Demurrage and Detention Policies*

The Commission further proposes making clear that it may consider in the reasonableness analysis the existence and accessibility of policies implementing demurrage and detention practices and regulations, including dispute resolution policies. In assessing dispute resolution policies, the Commission would further consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements.

1. Existence and Accessibility of Policies

Cargo interests should be informed of who is being charged, for what, by whom, and how disputes can be addressed in a timely fashion.[21] The opacity of current practices encourages disputes and discourages competition over demurrage and detention charges. Accordingly, the proposed rule would have the Commission consider in the reasonableness analysis the *existence* of policies—whether a regulated entity has demurrage and detention policies that reflect its practices. The Commission would also consider the *accessibility* of policies—whether and how those policies are made available to cargo interests and truckers and the public. The more accessible these policies are, the greater this factor weighs against a finding of unreasonableness. This factor favors demurrage and detention practices and regulations that make policies available in one, easily

[17] Final Report at 16, 20–22.

[18] Interim Report at 4 (emphasizing importance of consistent notice to shippers of cargo availability); *see also id.* at 18.

[19] Final Report at 20.

[20] *See* Final Report at 29.

[21] The Fact-Finding Officer noted that there is a marked lack of transparency regarding demurrage and detention practices, including billing procedures and dispute resolution processes. Interim Report at 2, 4, 5, 10–12; Final Report at 7, 13–18, 29; *see also* Final Report at 32 (emphasizing need for clear, simplified, and accessible billing practices and dispute resolution processes and explicit guidance on evidence).

accessible website, whereas burying demurrage and detention policies in scattered sections in tariffs would be disfavored.[22]

As for dispute resolution policies, not only should they be accessible, but the Commission will consider whether they address things such as points of contact for disputing charges; time frames for raising disputes, for responding to cargo interests or truckers, and for resolving disputes; and the types of information or evidence relevant to resolving demurrage or detention disputes.[23] Other attributes of dispute resolution policies that will weigh in favor of reasonableness include step-by-step instructions for disputing a charge, dedicated dispute resolution staff at regulated entities, allowing priority appointments or waiving appointments after successful dispute resolution or when a container is not available; sufficient responses to cargo interests requests for free time extensions or waiver; processes for elevating disputes after an initial response; and allowing a trucker to continue to do business with a regulated entity during the pendency of a dispute.

As an example, the best practices proposal put forward by the Ocean Carrier Equipment Management Association (OCEMA)—and made available on OCEMA's website—is a useful model for demurrage and detention dispute resolution policies, which each regulated entity would tailor to fit its own circumstances.[24] That model supports including in demurrage and detention policies: (1) Points of contact for demurrage and detention disputes (names, phone numbers, and email addresses); (2) ''[a] description of what information is required to be provided by the shipper in order to make a detention and/or demurrage dispute claim;'' (3) timeframes for raising a dispute and providing a response; and (4) that individual entities' dispute resolution processes web pages be linked to the OCEMA website.[25]

2. Billing

The efficacy (and reasonableness) of dispute resolution policies also depends on demurrage and detention bills having enough information to allow cargo interests to meaningfully contest the charges. Another proposal that could promote transparency and alignment of stakeholder interests is to tie billing relationships to ownership or control of the assets that are the source of charges.[26] Under this approach, marine terminal operators would bill cargo interests directly for use of terminal land. Ocean carriers would bill cargo interests directly for use of containers.[27] This approach is also consistent with the Commission's preferred definitions of ''demurrage'' and ''detention.'' [28] Moreover, regardless of billing model, ocean carriers should bill their customers, rather than imposing charges contractually-owed by cargo interests on third parties. The Commission is interested in comments on this proposal.

3. Guidance on Evidence

Dispute resolution policies that lack guidance on corroboration requirements, that is, guidance about the types of evidence relevant to resolving demurrage and detention disputes, are likely to fall on the unreasonable end of the spectrum. Cargo interests and truckers have suggested several ideas regarding this topic, which, if implemented by regulated entities, would weigh favorably in the § 41102 analysis, including: (a) Providing truckers with evidence substantiating trucker attempts to retrieve cargo that are thwarted when the cargo is not available (*e.g.,* a trouble ticket with information about container and container unavailability); and (b) providing cargo interests and truckers with log records that track attempts to make appointments. Dispute resolution policies should include evidentiary guidance. The OCEMA best practices proposal, for example, expressly contemplates such guidance.

*D. Transparent Terminology*

Finally, according to the proposed interpretive rule, the Commission may consider in the reasonableness analysis the extent to which regulated entities have defined the terms used in demurrage and detention practices and regulations, the accessibility of definitions, and the extent to which the definitions differ from how the terms are used in other contexts.

For demurrage and detention practices and regulations to be just and reasonable, it must be clear what the terminology means.[29] Accordingly, the Commission will consider in the reasonableness analysis whether a regulated entity has defined the material terms of the demurrage or detention practice at issue, whether and how those definitions are made available to cargo interests, truckers, and the public, and how those definitions differ from a regulated entity's past use of the terms, how the terms are used elsewhere in the port at issue, and how the terms are used in the U.S. trade.

The Commission supports defining demurrage and detention in terms of what asset is the source of a charge (land or container) as opposed to the location of a container (inside or outside a terminal).[30] Under the former, ''demurrage'' would be a charge related to terminal space, and ''detention'' would be a charge related to containers.[31] The Commission strongly discourages the continued use of terms such as ''storage'' and ''per diem'' in this context because not only do they add unnecessary complexity, the Commission has been informed that they are inconsistent with international practice.

## IV. Public Participation

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

*How do I submit confidential business information?*

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you

[22] Interim Report at 17 (Part IV.2a); Final Report at 14, 29–30.

[23] *See* Interim Report at 14, 17–18; Final Report at 7–8, 17–18.

[24] *http://www.ocema.org/OCEMA%20Recommended%20Best%20Practice%20for%20Detention%20and%20Demurrage%20Dispute%20Resolution%20Processes.pdf.*

[25] *Id.*

[26] Interim Report at 18 (describing optional billing model).

[27] *Id.*

[28] *See infra* at Part III.E.

[29] Interim Report at 5–7, 17; Final Report at 11–12, 30, 32.

[30] Interim Report at 6–7; Final Report at 12. This preference does not limit the applicability of this rule to demurrage and detention so defined. As noted in Part III.A *supra,* the proposed interpretive rule applies however a regulated entity defines these types of charges.

[31] Interim Report at 6–7; Final Report at 12.

must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and it must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

*Will the Commission consider late comments?*

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

*How can I read comments submitted by other people?*

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

**V. Rulemaking Analyses**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities. 5 U.S.C. 603. An agency is not required to publish an IRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: Interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. See 5 U.S.C. 553(b).

Although the Commission has elected to seek public comment on this proposed rule, the rule is an interpretive rule. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare an IRFA.

*National Environmental Policy Act*

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule regarding the Commission's interpretation of the 46 U.S.C. 41102(c) falls within the categorical exclusion for investigatory and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act of 1984. 46 CFR 504.4(a)(22). Therefore, no environmental assessment or environmental impact statement is required.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. This proposed rule does not contain any collections of information as defined by 44. U.S.C. 3502(3) and 5 CFR 1320.3(c).

*Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

*Regulation Identifier Number*

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

**List of Subjects in 46 CFR Part 545**

Antitrust, Exports, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Maritime Commission proposes to amend 46 CFR part 545 as follows:

## PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

■ 1. The authority citation for part 545 continues to read as follows:

**Authority:** 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23.

■ 2. Add § 545.5 to read as follows:

### § 545.5 Interpretation of Shipping Act of 1984-Unjust and unreasonable practices with respect to demurrage and detention.

(a) *Purpose.* The purpose of this rule is to provide guidance about how the Commission will interpret 46 U.S.C. 41102(c) and § 545.4(d) in the context of demurrage and detention.

(b) *Applicability and Scope.* This rule applies to practices and regulations relating to demurrage and detention for containerized cargo. For purposes of this rule, demurrage and detention include any charges, including ''per diem,'' assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries (''regulated entities'') related to the use of marine terminal space (*e.g.,* land) or shipping containers, not including freight charges.

(c) *Incentive Principle.* In assessing the reasonableness of demurrage and detention practices and regulations, the Commission will consider the extent to which demurrage and detention are serving their intended purposes as financial incentives to promote freight fluidity.

(d) *Particular Applications of Incentive Principle.*—(1) *Cargo Availability.* The Commission may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.

(2) *Empty Container Return.* Absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.

(3) *Notice of Cargo Availability.* In assessing the reasonableness of

demurrage practices and regulations, the Commission may consider whether and how regulated entities provide notice to cargo interests that cargo is available for retrieval. The Commission may consider the type of notice, to whom notice is provided, the format of notice, method of distribution of notice, the timing of notice, and the effect of the notice.

(4) Government Inspections.

(e) *Demurrage and Detention Policies.* The Commission may consider in the reasonableness analysis the existence and accessibility of policies implementing demurrage and detention practices and regulations, including dispute resolution policies. In assessing dispute resolution policies, the Commission may further consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements.

(f) *Transparent Terminology.* The Commission may consider in the reasonableness analysis the extent to which regulated entities have defined the terms used in demurrage and detention practices and regulations, the accessibility of definitions, and the extent to which the definitions differ from how the terms are used in other contexts.

By the Commission.

**Rachel Dickon,**

*Secretary.*

[FR Doc. 2019–19858 Filed 9–16–19; 8:45 a.m.]

**BILLING CODE 6731–AA–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1502, 1512, 1513, 1516, 1532, 1539, and 1552

**[EPA–HQ–OARM–2018–0714; FRL–9998–55–OMS]**

### Environmental Protection Agency Acquisition Regulation; Unenforceable Commercial Supplier Agreement Terms, Class Deviations, and Update for Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend the Environmental Protection Agency Acquisition Regulation (EPAAR) to address common Commercial Supplier Agreement terms that are inconsistent with or create ambiguity with Federal Law, to create a new subpart for class deviations, and to update clause Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract.

**DATES:** Comments must be received on or before November 18, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2018–0714, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Thomas Valentino, Policy, Training and Oversight Division, Acquisition Policy and Training Branch (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4522; email address: *valentino.thomas@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

1. *Submitting Classified Business Information.* Do not submit CBI to EPA website *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a *Code of Federal Regulations* (CFR) Part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. Background

1. Incompatibility of Commercial Supplier Agreements

EPA defines Commercial Supplier Agreements (CSAs) as terms and conditions that are customarily offered to the public by vendors of supplies or services that meet the Federal Acquisition Regulation (FAR) definition of ''commercial item'' and are intended to create a binding legal obligation on the end user. CSAs are common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, and they may apply to any supply or service.

Commercial supplies and services are offered to the public under standard agreements that may take a variety of forms, including but not limited to license agreements, terms of service, and terms of sale or purchase. These standard CSAs contain terms and conditions that are appropriate when the purchaser is a private party, but not when the purchaser is the Federal Government.

The existence of Federally-incompatible terms in standard CSAs is recognized in FAR 27.405–3(b), which is limited to the acquisition of commercial computer software. This subsection advises contracting officers to exercise caution when accepting a

contractor's terms and conditions. The use of CSAs is not limited to information technology acquisitions, as they have become common in a broad variety of contexts, from travel to telecommunications to financial services to building maintenance systems; including purchases below the simplified acquisition threshold.

Discrepancies between CSAs and Federal law, or the Government's needs, create recurrent points of inconsistency. Below are examples of incompatible clauses that are commonly found in CSAs:

- Jurisdiction or venue clauses may require that disputes be resolved in a particular state or Federal court. Such clauses conflict with the sovereign immunity of the U.S. Government and cannot apply to litigation where the U.S. Government is a defendant because those disputes must be heard either in U.S. District Court (28 U.S.C. 1346) or the U.S. Court of Federal Claims (28 U.S.C. 1491).
- Automatic renewal clauses may automatically renew or extend contracts unless affirmative action is taken by the Government. Such clauses that require the obligation of funds prior to appropriation violate the restrictions of the *Anti-Deficiency Act* (31 U.S.C. 1341(a)(1)(B)).
- Termination clauses may allow the contractor to unilaterally terminate a contract if the Government is alleged to have breached the contract. Government contracts are subject to the *Contract Disputes Act* of 1978 (41 U.S.C. 601–613). The *Contract Disputes Act* requires a certain process for resolving disputes, including terminations, and that the ''Contractor shall proceed diligently with performance of this contract, pending final resolution'' under the terms of the FAR *Disputes* clause at 52.233–1.

Additionally, the current order of precedence contained in the *Commercial Items* clause at FAR 52.212–4 is not clear on prevailing terms, and potentially allows CSAs to supersede the terms of Federal contracts, especially in those areas where Federal law is implicated indirectly. As a result, industry and Government representatives must spend time and resources negotiating and tailoring CSAs to comply with Federal law and to ensure both parties have agreement on the contract terms.

2. Value of Addressing Incompatible Commercial Supplier Agreements

EPA has identified common illegal, improper or inappropriate CSA terms that constitute the majority of the negotiated CSA terms. The outcome of the negotiations regarding these identified terms is generally predetermined by rule of law, but EPA and contractors must spend time and resources to negotiate these terms. By explicitly addressing common unenforceable terms within the *Commercial Items* clause at FAR 52.212–4 and clarifying prevailing terms in the order of precedence, it eliminates the need for negotiation of these terms.

This approach will decrease the time needed for legal review prior to contract award, and will reduce costs to both the Government and contractors. EPA believes that such an approach will benefit contractors, including small business concerns, by: (1) Decreasing proposal costs associated with negotiating the identified unenforceable CSA terms; (2) facilitating faster procurement and contract lead times, therefore decreasing the time it takes for contractors to make a return on their investment; (3) reducing administrative costs for companies that maintain alternate Federally compliant CSAs; and (4) for small business concerns, it levels the playing field with larger competitors since negotiations will only be required if the CSA contains objectionable clauses outside of those already identified in proposed clause. Additionally, this approach ensures consistent application and understanding of these unenforceable terms.

3. EPA Class Deviation

EPA is issuing class deviations for two Federal Acquisition Regulation (FAR) clauses to address the order of precedence and CSA terms that are incompatible with Federal law. The class deviations not only protect EPA and contractors by uniformly addressing common unacceptable terms and reducing risk, but also by further streamlining the acquisition process and reducing administrative cost for commercial-item supplies and services. The class deviations also clarify the precedence of terms to ensure parties have a mutual understanding of the contract terms; for example, bilateral modifications to the CSAs are only required for material changes.

4. Updates to § 1516.505(b) and § 1552.216–73

The EPA is updating clause 1552.216–73, *Fixed Rates for Services–Indefinite Delivery/Indefinite Quantity Contract,* to add Alternate I (which had previously been a deviation) to the Basic form. The deviation was issued in April 2018 and provides for contractors to be paid escalated rates for optional periods of performance. The deviation is amended into an alternate version because there is an ongoing need for the deviation. The corresponding prescription in § 1516.505(b) is being updated accordingly.

5. New Subpart 1552.3

EPA is creating a new subpart 1552.3, *FAR and EPAAR Class Deviations,* that will contain FAR and EPAAR class deviations initiated by the EPA. As discussed in II.*3.* in this preamble the EPA is creating two new FAR class deviations in this proposed rulemaking that will be added to the new subpart: Class deviations for 52.212–4, *Contract Terms and Conditions—Commercial Items (FAR DEVIATION);* and 52.232–39, *Unenforceability of Unauthorized Obligations (FAR DEVIATION).*

## III. Discussion and Analysis

EPA is proposing to amend the EPAAR to implement standard terms and conditions for the most common conflicting CSA terms and to minimize the need for the negotiation of these terms of CSAs on an individual basis. The proposed rulemaking will add requirements to contracts making certain conflicting or inconsistent terms in a CSA unenforceable so long as an express exception is not authorized elsewhere by Federal statute. EPA is also proposing to amend the EPAAR to modify the order of precedence contained in the *Commercial Items* clause (FAR 52.212–4) to make clear that all of the terms of the EPAAR deviated clause control in the event of a conflict with a CSA, unless both parties agree to specific terms during the course of negotiating the contract. The EPA is also proposing to amend the EPAAR to create new subpart 1552.3 for class deviations. The EPA also proposes to change the deviated version of clause 1552.216–73 into an alternate version because of its ongoing need.

These changes will be accomplished by revising guidance and clauses contained throughout the EPAAR as follows:

- EPAAR § 1502.100 is amended to provide a definition for *Commercial Supplier Agreements.*
- EPAAR § 1512.101 is created and clarifies that paragraph (u) of the deviated *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) prevents violation of the *Anti-Deficiency Act.*
- EPAAR § 1512.1070 is created to prescribe the use of the deviated *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) in lieu of FAR 52.212–4.
- EPAAR § 1513.507(b) is amended and requires the inclusion of

§ 1552.332–39 and § 1552.232–75 in all acquisitions for supplies or services that are offered under a CSA.

- EPAAR Subpart 1513.6 is created and will add § 1552.332–39 to all purchases below the micro-purchase threshold.
- EPAAR § 1516.505(b) is amended to update the prescription for § 1552.216–73.
- EPAAR Subpart 1532.10 is created and clarifies the definition of ''supplier license agreements'' as used in FAR 32.705, *Unenforceability of Unauthorized Obligations.*
- EPAAR § 1532.1070 is created and directs contracting officers to utilize the clause at § 1552.332–39 in lieu of FAR 52.232–39; and prescribes the use of clause *Commercial Supplier Agreements—Unenforceable Clauses* at 1552.232–75.
- EPAAR Subpart 1539.1 is created and advises contracting officers and contract specialists to follow the relevant EPAAR rules relating to CSA procurement.
- EPAAR § 1552.216–73 is amended to add an alternate clause version.
- EPAAR § 1552.232–75 is created for non-commercial contracts and addresses the same common unenforceable CSA terms addressed in § 1552.312–4 (FAR DEVIATION) paragraph (w) described above.
- EPAAR Subpart 1552.3 is created and adds the class deviations for § 1552.312–4 and § 1552.332–39.
- The *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) in subpart 1552.3 is modified to include instructions to contracting officers on how to incorporate the change in language from FAR 52.212–4.
- The order of precedence contained in paragraph (s) of the *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) in subpart 1552.3 is amended to ensure that all of the terms of § 1552.312–4 shall control over the terms of a CSA by moving ''Addenda to this solicitation or contract, including any license agreements for computer software'' down two spaces in the order of precedence, behind ''Solicitation provisions as awarded if there is a solicitation'' and ''Other paragraphs of this clause.''
- Paragraph (u) of the *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) in subpart 1552.3 is amended to (1) reflect the new *Commercial Supplier Agreement* definition contained in EPAAR 1502.100; (2) expand coverage to ''language or provision'' in addition to ''clause'' in order to ensure that all CSA terms are covered regardless of terminology utilized; and (3) include future fees, penalties, interest and legal costs as unauthorized obligations in addition to indemnification.
- Paragraph (w) of the *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) in subpart 1552.3 is created to address the following commonplace unenforceable elements found in CSAs:
  - *Definition of contracting parties:* Contract agreements are between the commercial supplier or licensor and the U.S. Government. Government employees or persons acting on behalf of the Government will not be bound in their personal capacity by the CSA.
  - *Laws and disputes:* Clauses that conflict with the sovereign immunity of the U.S. Government cannot apply to litigation where the U.S. Government is a defendant because those disputes must be heard either in U.S. District Court or the U.S. Court of Federal Claims. CSA terms that require the resolution of a dispute in a forum or time period other than those expressly authorized by Federal law are deleted. Statutes of limitation on potential claims shall be governed by U.S. Federal law.
  - *Continued Performance:* Commercial suppliers may not unilaterally terminate or suspend a contract based upon a suspected breach of contract by the Government. These types of CSA terms violate 31 U.S.C. 3324, which provides that payment under a contract may not exceed the value of a service or product already delivered. A license that is prematurely terminated outside of the regular dispute resolution procedures results in the Government not receiving the value of that good or service ordered because it is no longer delivered. The removal of the contractor's right to unilateral termination does not impair the contractor's ability to pursue remedies. It preserves all the legal remedies the contractor otherwise has under Federal law, including *Contract Disputes Act* claims. Remedies through the *Contract Disputes Act* or other applicable Federal statutes align with the continuing performance requirement set forth in subparagraph (d) *Disputes.*
  - *Arbitration; equitable or injunctive relief:* A binding arbitration may not be enforced unless explicitly authorized by agency guidance or statute. Equitable remedies or injunctive relief such as attorney fees, cost or interest may only be awarded against the U.S. Government when expressly authorized by statute (*e.g., Prompt Payment Act*).
  - *Additional Terms:* Incorporation of terms by reference is allowed provided the full text of terms is provided with the offer. Unilateral modifications to the CSA after the time of award may be allowed to the extent that the modified terms do not materially change the Government's rights or obligations, increase the Government's prices, decrease the level of service provided, or limit any Government right addressed elsewhere in the contract. A bilateral contract modification is required for any of the above described changes to be enforceable against the Government.
  - *Automatic renewals:* Due to *Anti-Deficiency Act* restrictions, automatic contract renewal clauses are impermissible. Any such CSA clauses are unenforceable.
  - *Indemnity* (contractor assumes control of proceedings): Any clause requiring that the commercial supplier or licensor control any litigation arising from the Government's use of the contractor's supplies or services is deleted. Such representation when the Government is a party is reserved by statute for the U.S. Department of Justice.
  - *Audits (*automatic liability for payment): Discrepancies found during an audit must comply with the invoicing procedures from the underlying contract. Disputed charges must be resolved through the *Disputes* clause. Any audits requested by the commercial supplier or licensor will be performed at supplier or licensor's expense.
  - *Taxes or surcharges:* Any taxes or surcharges that will be passed along to the Government will be governed by the terms of the underlying contract. The cognizant contracting officer must make a determination of applicability of taxes whenever such a request is made.
  - *Assignment of CSA or Government contract by supplier:* The contract, CSA, party rights and party obligations may not be assigned or delegated without express Government approval. Payment to a third party financial institution may still be reassigned.
  - *Confidentiality of CSA terms and conditions:* The content of the CSA may not be deemed confidential. The Government may retain other marked confidential information as required by law, regulation or agency guidance, but will appropriately guard such confidential information.
- § 1552.332–39 (FAR DEVIATION) in subpart 1552.3 is created to amend the language of FAR 52.232–39 to reflect the definition of CSAs contained at EPAAR 1502.100, to expand coverage to ''language or provision'' in addition to ''clause'' in order to ensure that all CSA terms are covered, regardless of terminology utilized; and to include future fees, penalties, interest and legal

costs as unauthorized obligations in addition to indemnification.

This proposed rule will reduce risk by uniformly addressing common unacceptable CSA terms, facilitate efficiency and effectiveness in the contracting process by reducing the administrative burden for the Government and industry, and promote competition by reducing barriers to industry, including small businesses. It will also create a new EPAAR subpart for class deviations, and an alternate version for clause 1552.216–73.

## IV. Proposed Rule

The proposed rule amends Part 1502, *Definition of Words and Terms,* by adding a definition for *Commercial Supplier Agreements* to § 1502.100. It adds Part 1512, *Acquisition of Commercial Items,* Subpart 1512.1, *Special Requirements for the Acquisition of Commercial Items,* § 1512.101, *Unenforceability of Unauthorized Obligations,* and § 1512.1070, *Contract Clause.* It amends Part 1513, *Simplified Acquisition Procedures,* by adding Subpart 1513.6, *Action At or Below the Micropurchase Threshold,* and amending § 1513.507(b). It amends § 1516.505(b) by adding an alternate clause version to the clause prescription. It amends Part 1532, *Contract Financing,* by adding Subpart 1532.10, *Unenforceability of Unauthorized Obligation;* and § 1532.1070, *Contract clause.* It adds Part 1539, *Acquisition of Information Technology,* and Subpart 1539.1, *Commercial Supplier Agreements.* It amends Subpart 1552.2, *Texts of Provisions and Clauses,* by adding an alternate clause version to § 1552.216–73, *Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract;* and adding § 1552.232–75, *Commercial Supplier Agreements—Unenforceable Clauses.* Finally, it amends Part 1552, *Solicitation Provisions and Contract Clauses,* by adding Subpart 1552.3, *FAR and EPAAR Class Deviations,* and class deviations for clauses 52.212–4 and 52.232–39. This proposed rule:

1. Amends Part 1502, *Definition of Words and Terms,* by adding a definition for *Commercial Supplier Agreements to* § 1502.100, *Definitions.*

2. Adds Part 1512, *Acquisition of Commercial Items,* and Subpart 1512.1, *Special Requirements for the Acquisition of Commercial Items,* which clarify that paragraph (u) of the *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) prevents violation of the *Anti-Deficiency Act.*

3. Adds § 1512.101, *Unenforceability of Unauthorized Obligations,* and § 1512.1070, *Contract Clause,* to prescribe the use of the deviated *Commercial Items* clause at § 1552.312–4 (FAR DEVIATION) in lieu of FAR 52.212–4.

4. Amends Part 1513, Simplified Acquisition Procedures, by adding Subpart 1513.6, Action At or Below the Micropurchase Threshold, and amending § 1513.507(b), which will automatically apply the clauses at § 1552.232–75 and § 1552.332–39 to all purchases below the micro-purchase threshold.

5. Amends the currently designated § 1513.507(a) to become § 1513.507(a)(i), and the currently designated § 1513.507(b) to become § 1513.507(a)(ii), due to the addition above.

6. Amends § 1516.505(b) by adding an alternate clause version to the prescription.

7. Adds EPAAR Subpart 1532.10, *Unenforceability of Unauthorized Obligation,* that clarifies the definition of supplier license agreements.

8. Adds EPAAR § 1532.1070 and establishes the prescription for use of EPAAR clause 1552.232–75 in all procurements where supplies or services are offered under a CSA.

9. Adds Part 1539, *Acquisition of Information Technology,* and Subpart 1539.1, *Commercial Supplier Agreements.*

10. Amends Subpart 1552.2, *Texts of Provisions and Clauses,* to add an alternate clause version to § 1552.216–73, *Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract,* that pays the contractor escalated rates for optional periods of performance.

11. Adds EPAAR § 1552.232–75, *Commercial Supplier Agreements—Unenforceable Clauses,* that provides the terms and conditions for supplies or services offered under a CSA.

12. Adds EPAAR Subpart 1552.3, *FAR and EPAAR Class Deviations,* to contain § 1552.312–4, *Contract Terms and Conditions—Commercial Items (FAR DEVIATION);* and § 1552.332–39/ *Unenforceability of Unauthorized Obligations (FAR DEVIATION).* § 1552.312–4 updates paragraphs (s) and (u), and adds paragraph (w). § 1552.332–39 updates terms from *Terms of Sale* and *End User Licensing Agreement* to *Commercial Supplier Agreement.*

## V. Statutory and Executive Orders Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impact of this proposed rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' 5 U.S.C. 503 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action creates a new EPAAR clause, clause alternate and class deviations that will not have a significant economic impact on a substantial number of small entities, as

discussed in Section (II)(B). We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications as specified in Executive Order 13175.

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environment health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28335 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act of 1995 (NTTAA)*

Section 12(d) (15 U.S.C. 272 note) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment in the general public.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a major rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804(2) defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. EPA is not required to submit a rule report regarding this action under section 801 as this is not a major rule by definition.

**List of Subjects in 48 CFR Parts 1502, 1512, 1513, 1516, 1532, 1539 and 1552**

Environmental protection, Accounting, Government procurement, Reporting and recordkeeping requirements.

Dated: August 13, 2019.

**Kimberly Y. Patrick,**

*Director, Office of Acquisition Solutions.*

For the reasons stated in the preamble, 48 CFR parts 1502, 1512, 1513, 1516, 1532, 1539 and 1552 are proposed to be amended as follows:

## PART 1502—DEFINITION OF WORDS AND TERMS

■ 1. The authority citation for part 1502 continues to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 2. Revise 1502.100 to read as follows:

**1502.100 Definitions.**

*Chief of the Contracting Office (CCO)* means the Office of Acquisition Solutions Division Directors at Headquarters, Research Triangle Park and Cincinnati. For purposes of ratification authority only, CCO also includes Regional Acquisition Managers. (See 1501.602–3(b)(3) for the criteria for this ratification authority).

*Commercial supplier agreements (CSAs)* mean terms and conditions customarily offered to the public by vendors of supplies or services that meet the definition of ''commercial item'' set forth in FAR 2.101 and intended to create a binding legal obligation on the end user. CSAs are common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, and they may apply to any supply or service. CSAs may apply regardless of the format or style of the document (for example, a CSA may be styled as *standard terms of sale or lease, Terms of* Service (TOS), *End User License Agreement* (EULA), or another similar legal instrument or agreement, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order). CSAs may also apply regardless of the media or delivery mechanism used (for example, a CSA may be presented as one or more paper documents, or may appear on a computer or other electronic device screen during a purchase, software installation, product delivery, registration for a service, or other transaction).

*Head of the Contracting Activity (HCA)* means the Director, Office of Acquisition Solutions.

*Senior Procurement Executive (SPE)* means the Director, Office of Acquisition Solutions.

## SUBCHAPTER B—ACQUISITION PLANNING

■ 3. Add part 1512 to read as follows:

## PART 1512—ACQUISITION OF COMMERCIAL ITEMS

### Subpart 1512.1—Special Requirements for the Acquisition of Commercial Items



**Authority:** 5 U.S.C. 301 and 41 U.S.C. 418b.

### Subpart 1512.1—Special Requirements for the Acquisition of Commercial Items

**1512.101 Unenforceability of unauthorized obligations.**

EPA deviates from FAR 52.212–4 by using the term ''Commercial Supplier Agreements'' (defined in 1502.100) for commercial contracts instead of ''supplier license agreements''. Paragraph (u) of clause 1552.332–39 (FAR DEVIATION) prevents violations of the *Anti-Deficiency Act* (31 U.S.C. 1341) for the acquisition of supplies or services subject to a Commercial Supplier Agreement.

**1512.1070 Contract clause.**

EPA deviates from FAR 52.212–4 by revising paragraphs (s) and (u) and adding paragraph (w). Contracting officers shall use clause 1552.332–39, Contract Terms and Conditions-Commercial Items (FAR DEVIATION), for acquisitions of commercial items in lieu of 52.212–4 or 52.212–4 Alternate I. The contracting officer may tailor this clause in accordance with FAR 12.302.

## PART 1513—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. The authority citation for part 1513 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

■ 5. Revise section 1513.507 to read as follows:

**1513.507 Contract clauses.**

(a)(1) It is the general policy of the Environmental Protection Agency that contractor or vendor prescribed leases or maintenance agreements for equipment shall not be executed.

(2) The contracting officer shall, where appropriate, insert the clause at 1552.213–70, *Notice to Suppliers of Equipment,* in orders for purchases or leases of automatic data processing equipment, word processing, and similar types of commercially available equipment for which vendors, as a matter of routine commercial practice, have developed their own leases and/or customer service maintenance agreements.

(b) Where the supplies or services are offered under a Commercial Supplier Agreement (as defined in 1502.100), the purchase order or modification shall incorporate clause 1552.332–39, *Unenforceability of Unauthorized Obligations* (FAR DEVIATION), in lieu of nondeviated clause 52.232–39, and clause 1552.232–75, *Commercial Supplier Agreements-Unenforceable Clauses.*

■ 6. Add subpart 1513.6, consisting of 1513.6XX, to read as follows:

### Subpart 1513.6—Actions at or Below the Micro-Purchase Threshold

**1513.6XX Unenforceability of unauthorized obligations in micro-purchases.**

*Unenforceability of unauthorized obligations in micro-purchases.* Clause 1552.332–39, *Unenforceability of Unauthorized Obligations* (FAR DEVIATION), will automatically apply to any micro-purchase in lieu of nondeviated FAR 52.232–39 for supplies and services acquired subject to a commercial supplier agreement (as defined in 1502.100).

## PART 1516—TYPES OF CONTRACTS

■ 7. The authority citation for part 1516 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 41 U.S.C. 418b.

■ 8. Amend section 1516.505 by revising paragraph (b) to read as follows:

**1516.505 Contract clauses.**

* * * * *

(b) The contracting officer shall insert clause substantially the same as 1552.216–73, *Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract,* in solicitations and contracts to specify fixed rates for services. Contracting officers may use Alternate I for procurements that will have order performance periods longer than one year. Alternate I has a different paragraph (c) from the Basic form. Contracting officers must use the Basic form as prescribed for procurements that will have orders with performance periods of one year or less. Contracting officers may use both the Basic form and Alternate I for procurements that will have mixed-length orders, where some are for one year or less, and others are for longer than one year. In such cases contracting officers must include procurement language that the Basic form applies to orders less than one year, and Alternate I applies to orders longer than one year.

## PART 1532—CONTRACT FINANCING

■ 9. The authority citation for part 1532 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 41 U.S.C. 418b.

■ 10. Add subpart 1532.10 to read as follows:

### Subpart 1532.10—Unenforceability of Unauthorized Obligations

### Subpart 1532.10—Unenforceability of Unauthorized Obligations

#### 1532.10XX Definitions.

*Supplier license agreements* defined in FAR 32.705 are equivalent to *Commercial Supplier Agreements* defined in 1502.100.

#### 1532.1070 Contract clause.

The contracting officer shall utilize the clause at 1552.332–39, *Unenforceability of Unauthorized Obligations* (FAR DEVIATION) in all solicitations and contracts in lieu of nondeviated FAR 52.232–39.

#### Subchapter F—Special Categories of Contracting

■ 11. Add part 1539, consisting of subpart 1539.1, to subchapter F to read as follows:

## PART 1539—ACQUISITION OF INFORMATION TECHNOLOGY

**Authority:** 5 U.S.C. 301 and 41 U.S.C. 418b.

### Subpart 1539.1—Commercial Supplier Agreements

#### 1539.1XX History.

(a) *Background*—(1) *Commercial Supplier Agreements (CSAs)* are defined at 1502.100 in part as terms and conditions that are customarily offered to the public by vendors of supplies or services that meet the definition of ''commercial item'' and are intended to create a binding legal obligation on the end user. CSAs are common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, and they may apply to any supply or service.

(2) Commercial supplies and services are offered to the public under standard agreements that may take a variety of forms, including, but not limited to, *license agreements, terms of service,* and *terms of sale or purchase.* These standard CSAs contain terms and conditions that are appropriate when the purchaser is a private party, but not when the purchaser is the Federal Government. The existence of Federally-incompatible terms in standard CSAs is recognized in FAR 27.405–3(b), which states contracting officers should exercise caution in accepting a vendor's terms and conditions, since they may be written for commercial sales and not appropriate for Government contracts. *(Note that the use of CSAs is not limited to information technology acquisitions, as they have become common in a broad variety of contexts, from travel to telecommunications to financial services to building maintenance systems; including purchases below the simplified acquisition threshold.)*

(b) *Policy.* The EPAAR includes standard terms and conditions for the most common conflicting CSA terms, and contracting officers and contract specialists must follow the relevant rules in parts 1512, 1513, and 1532 when purchasing information technology that includes a CSA.

## PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. The authority citation for part 1552 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 41 U.S.C. 418b.

### Subpart 1552.2—Texts of Provisions and Clauses

■ 13. Revise section 1552.216–73 to read as follows:

#### 1552.216–73 Fixed rates for services–indefinite delivery/indefinite quantity contract.

As prescribed in 1516.505(b), insert the following clause:

**Fixed Rates For Services—Indefinite Delivery/Indefinite Quantity Contract (Date)**

(a) The following fixed rates shall apply for payment purposes for the duration of the contact.

| Personnel classification | Skill level | Fixed hourly rate |
|---|---|---|
| | | |

(b) The rate, or rates, set forth in paragraph (a) of this clause, cover all expenses, including report preparation, salaries, overhead, general and administrative expenses, and profit.

(c) The Contractor shall voucher for only the time of the personnel whose services are applied directly to the work called for in individual Orders and accepted by the EPA Contracting Officer's Representative (COR). The Government shall pay the Contractor for the life of the Order at rates in effect when the Order was issued, even if performance under the Order crosses into another period. The Contractor shall maintain time and labor distribution records for all employees who work under the contract. These records must document time worked and work performed by each individual on all Orders.

(End of clause)

*Alternate I (date).* As prescribed in 1515.505(b), modify the Basic form of the clause by changing paragraph (c) to the following:

(c) The Contractor shall voucher for only the time of the personnel whose services are applied directly to the work called for in individual Orders and accepted by the EPA Contracting Officer's Representative (COR). The Government shall pay the Contractor at rates in effect when the work is performed by the Contractor. The Contractor shall maintain time and labor distribution records for all employees who work under the contract. These records must document time worked and work performed by each individual on all Orders.

■ 14. Add section 1552.232–75 to read as follows:

#### 1552.232–75 Commercial supplier agreements—unenforceable clauses.

As prescribed in 1513.507(b) and 1532.1070 insert the following clause:

**Commercial Supplier Agreements—Unenforceable Clauses (Date)**

When any supply or service acquired under this contract is subject to a Commercial Supplier Agreement (CSA, as defined in 1502.100), the following language shall be deemed incorporated into the CSA. As used herein, ''this agreement'' means the CSA:

(a) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(1) *Applicability.* This agreement is part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR parts 13, 14 or 15).

(2) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(3) *Law and disputes.* This agreement is governed by Federal law.

(i) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(ii) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(iii) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(4) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the *Contract Disputes Act* or other applicable Federal statute while continuing performance as set forth in FAR 52.233–1, Disputes.

(5) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (*e.g.,* Prompt Payment Act or Equal Access to Justice Act).

(6) *Updating terms.* (i) After award, the contractor may unilaterally revise terms if they are not material. A material change is defined as:

(A) Terms that significantly change Government rights or obligations; and

(B) Terms that increase Government prices;

(C) Terms that decrease overall level of service; or

(D) Terms that limit any other Government right addressed elsewhere in this contract.

(ii) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(iii) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(7) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (*e.g.,* annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(8) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(9) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(i) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(ii) This charge, if disputed by the ordering activity, will be resolved through the *Disputes* clause at FAR 52.233–1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(iii) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(10) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(11) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under the clause at FAR 52.232–23, Assignment of Claims.

(12) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed ''confidential information.'' Issues regarding release of ''unit pricing'' will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(b) If any language, provision or clause of this agreement conflicts or is inconsistent with paragraph (a) of this clause, the language, provisions, or clause of paragraph (a) of this clause shall prevail to the extent of such inconsistency.

(End of clause)

■ 15. Add subpart 1552.3 to read as follows:

**Subpart 1552.3—FAR and EPAAR Class Deviations**



**Authority:** 5 U.S.C. 301 and 41 U.S.C. 418b.

## Subpart 1552.3—FAR and EPAAR Class Deviations

### 1552.312–4 Contract terms and conditions–commercial items (FAR deviation).

As prescribed in 1512.1070, the contracting officer shall insert clause 1552.332–39, Contract Terms and Conditions-Commercial Item*s* (FAR DEVIATION), for acquisitions of commercial items in lieu of 52.212–4 or 52.212–4 Alternate I. The contracting officer may tailor this clause in accordance with FAR 12.302.

**Contract Terms and Conditions—Commercial Items (FAR Deviation) (Date)**

(a) *Inspection/acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.,* use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the

clause at FAR 52.233–1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202–1, *Definitions,* is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.,* 52.232–33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232–34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the *Prompt Payment Act* (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the *Prompt Payment Act* (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212–5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.,* duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.* (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 48 CFR 32.607–2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608–2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost

accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, *Contract Work Hours and Safety Standards;* 41 U.S.C. chapter 87, *Kickbacks;* 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, *Fly American;* and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) Paragraphs (b), (d), (g), (i), (q), (r), (u) and (w) of this clause.

(3) The clause at 52.212–5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements—Unenforceable Clauses provision.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) *Unauthorized obligations.* (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 1502.100) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an *Anti-Deficiency Act* violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an ''I agree'' click box or other comparable mechanism (*e.g.,* ''click-wrap'' or ''browse-wrap'' agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the *System for Award Management* (SAM), are incorporated by reference into the contract.

(w) *Commercial Supplier Agreements—unenforceable clauses.* When any supply or service acquired under this contract is subject to a Commercial Supplier Agreement (as defined in 1502.100), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, ''this agreement'' means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR part 12).

(ii) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in paragraph (d) of this clause (*Disputes*).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (*e.g., Prompt Payment Act* or *Equal Access to Justice Act*).

(vi) *Updating terms.* (A) After award, the contractor may unilaterally revise terms if they are not material. A material change is defined as:

(*1*) Terms that change Government rights or obligations;

(*2*) Terms that increase Government prices;

(*3*) Terms that decrease overall level of service; or

(*4*) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (*e.g.,* annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any

resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved in accordance with paragraph (d) (*Disputes*) of this clause; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under paragraph (b) of this clause.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed ''confidential information.'' Issues regarding release of ''unit pricing'' will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with paragraph (w)(1) of this clause, the language, provisions, or clause of paragraph (w)(1) of this clause shall prevail to the extent of such inconsistency.

(End of clause)

**1552.332–39 Unenforceability of unauthorized obligations (FAR deviation).**

As prescribed in 1513.507(b) and 1532.1070, use clause 1552.332–39 (FAR DEVIATION) instead of the nondeviated version for purchase orders, modifications and contracts that include commercial supplier agreements.

**Unenforceability of Unauthorized Obligations (Far Deviation) (Date)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 1502.100) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such language, provision, or clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such language, provision, or clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an ''I agree'' click box or other comparable mechanism (*e.g.,* ''click-wrap'' or ''browse-wrap'' agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(b) Paragraph (a) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

[FR Doc. 2019–19575 Filed 9–16–19; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 571 and 585

**[Docket No. NHTSA–2019–0085]**

**RIN 2127–AL93**

## Federal Motor Vehicle Safety Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 141, *Minimum Sound Requirements for Hybrid and Electric Vehicles,* to allow manufacturers of hybrid and electric vehicles (HEVs) to install a number of driver-selectable pedestrian alert sounds in each HEV they manufacture. This proposal responds to a petition for reconsideration of the FMVSS No. 141 final rule published December 14, 2016. NHTSA is proposing to remove the limit to the number of compliant sounds that a manufacturer may choose to install in a vehicle. Drivers would be able to select the sound they prefer from the set of sounds installed in the vehicle. NHTSA is also seeking comment on whether interested parties believe that the agency should establish a limit to the number of compliant sounds from which a driver may select that a manufacturer may choose to install in a vehicle.

This document also makes technical changes.

**DATES:** Comments on this proposal must be received no later than November 1, 2019.

**ADDRESSES:** All comments and other information relating to this notice should refer to the docket number in the heading of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** You may contact Mr. Thomas Healy, NHTSA Office of the Chief Counsel, at 202–366–2992 (FAX: 202–366–3820) or Mr. Michael Pyne, NHTSA Office of Crash Avoidance Standards, at 202–366–4171 (FAX: 202–493–2990).

**SUPPLEMENTARY INFORMATION:** NHTSA is proposing to amend FMVSS No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (the ''Quiet Vehicles'' final rule) to remove the current limitation of one sound per vehicle model. Under the proposal, there would not be a limit to the number of compliant sounds a manufacturer could install in a vehicle. NHTSA is also requesting comment on whether there should be a limit to the number of compliant sounds that a manufacturer can install in a vehicle and what that limit should be.

Under FMVSS No. 141 currently, the HEV pedestrian alert sounds are allowed to vary with vehicle operating condition (stationary, reverse, 10 km/h, 20 km/h, and 30 km/h), but only one sound per operating condition is allowed for all vehicles of the same model, model year, body type and trim level. This proposal responds to a petition for reconsideration of the FMVSS No. 141 final rule published on December 14, 2016.[1] In a joint petition [2] submitted to NHTSA in January 2017, the Alliance of Automobile Manufacturers (Alliance) and Global Automakers (Global), the two main automotive industry groups in the U.S. representing most light vehicle manufacturers, requested several amendments.[3] One of the requested

[1] Final Rule, Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles [81 FR 90416], effective September 5, 2017; docket No. NHTSA–2016–0125.

[2] Docket item no. NHTSA–2018–0018–0004.

[3] NHTSA issued a final rule on February 26, 2018, to address the other requested actions in the

amendments, addressed in this proposed rule, was that NHTSA modify section S5.5 of FMVSS No. 141 so that each HEV can be equipped with a suite of several pedestrian alert sounds for the driver to choose from rather than one sound. According to Alliance/Global, providing this choice is important for consumer acceptance of future HEVs that will have pedestrian alert sounds in compliance with FMVSS No. 141.

NHTSA promulgated FMVSS No. 141 pursuant to the Pedestrian Safety Enhancement Act (PSEA) of 2010.[4] The PSEA included language that placed constraints on the multitude of different HEV pedestrian alert sounds that are possible. The PSEA stated NHTSA should allow manufacturers to provide each vehicle with one or more sounds at the time of manufacture. The PSEA further stated that NHTSA must require that vehicles of the same make and model produce the same sound or set of sounds, which would result in all similar vehicles having a similar sound in a given operating condition (forward, reverse, etc.). The PSEA did not, however, establish a specific limitation on the number of sounds emitted by vehicles subject to the final rule.

NHTSA implemented this PSEA limitation in the FMVSS No. 141 final rule [5] under section S5.5 titled ''Sameness.'' This section states that vehicles of the same make, model, model year, and trim level must have the same pedestrian alert sound. The agency interpreted the PSEA ''sameness'' language to allow vehicles to have different sounds for different operating modes, such as forward, reverse and stationary. The requirements as published in FMVSS No. 141 do not permit a vehicle to have multiple sounds from which the driver can choose. The agency discussed this in the preamble of the final rule.[6]

The automotive industry groups' petition showed they had a different view of the language of the PSEA regarding multiple sounds per vehicle. Because the original Notice of Proposed Rulemaking (NPRM) for FMVSS No. 141 did not contemplate allowing driver-selectable sounds, the agency is opening this issue for public comment before proceeding with an amendment of FMVSS No. 141.

This notice also makes a technical change to section S6.7 of FMVSS No. 141 relating to ambient noise correction procedures. NHTSA has received several requests to clarify the procedural step in S6.7.3 for evaluation of ambient one-third octave bands in compliance tests. NHTSA is issuing a reworded paragraph S6.7.3 to specify more clearly the point at which the one-third octave bands should be computed during measurements of ambient noise.

Lastly, in this notice NHTSA is correcting two dates in the FMVSS No. 141 phase-in reporting requirements in 49 CFR 585, Subpart N.

This proposed rule is deregulatory in nature and is expected to generate benefits and cost savings in excess of costs. The proposed rule provides manufacturers with more flexibility and options in developing and installing sounds for their hybrid and electric vehicles. NHTSA believes it is reasonable to assume that manufacturers would not utilize the flexibilities provided by the proposal to develop and install additional selectable sound options unless the benefits exceed the costs to them. Likewise, NHTSA believes it is reasonable to assume that consumers would not pay more for vehicles with additional sound options unless the benefits to them exceed any additional cost of the vehicle.

**Background**

The PSEA was enacted in January 2011 and mandated that NHTSA must establish a new motor vehicle safety standard applying to HEVs. The PSEA stated the new standard must ''establish performance requirements for an alert sound that allows blind and other pedestrians to reasonably detect a nearby electric or hybrid vehicle operating below the cross-over speed . . . .'' In section 3(2) of the PSEA, there is a provision addressing ''sameness'' of the required vehicle alert sounds. Section 3(2) states that HEVs must have ''within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model . . . .''

Pursuant to the PSEA, NHTSA issued an NPRM [7] in January 2013 and a final rule in December 2016, to create a new FMVSS setting minimum sound level requirements for the operation of HEVs at speeds up to 30 km/h. The requirements in the final rule respond to the PSEA mandate by providing a level of vehicle sound that the blind and sighted pedestrians, as well as bicyclists, can use to detect the presence of these so-called ''quiet vehicles,'' thereby reducing the risk of low-speed pedestrian and bicyclist crashes involving HEVs. The FMVSS applies to electric and hybrid-electric passenger cars, multi-purpose vehicles, light trucks, and buses with a GVWR of 10,000 pounds or less that can be operated in electric mode without an internal combustion engine (ICE). To comply with the standard, light vehicle manufacturers in most cases will equip vehicles with pedestrian alert systems that meet the minimum sound levels specified in the standard. These systems typically consist of one or more audio speakers, amplifiers, a control module, and software capable of generating the required sound. It is possible for a vehicle to meet some or all the minimum sound levels without added hardware if there is sufficient noise from other sources within the vehicle. For example, the sound emitted by a battery cooling system or a vehicle's tires at 30 km/h might satisfy the minimum specifications without added noise from an alert system.

After the final rule was published, NHTSA received timely petitions for reconsideration from three sources: The Auto Alliance in conjunction with Global Automakers (Alliance/Global), Nissan North America, Inc. (Nissan), and American Honda Motor Company, Inc. (Honda). Each of these petitioners requested changes to various aspects of the final rule. The requested changes included the phase-in schedule and compliance lead-time as well as other requirements of the new safety standard such as how much alert sound variation is allowed between vehicles of the same make and model. The petitions also asked for clarification of some technical aspects of the acoustic performance requirements and test procedures.

Alliance/Global included in its petition a request for NHTSA to amend S5.5 of the new safety standard to explicitly allow automakers to equip their HEVs with multiple different sounds, rather than just one sound, for each operating condition as specified in the FMVSS No. 141 final rule. NHTSA is responding to that petition request by proposing to amend FMVSS No. 141 to accommodate driver-selectable sounds. NHTSA is issuing this NPRM to solicit public comment on the proposed change.

Specifically, NHTSA proposes amending Paragraph S5.5.1 to remove any limit on the number of sounds per vehicle make/model. NHTSA is also requesting comment from any interested parties on whether there should be a limit to the number of driver selectable sounds and what that limit should be.

Alliance/Global petition for reconsideration. In that petition response, the agency announced that it was planning to publish a notice proposing to allow driver-selectable sounds.

[4] Public Law 111–373, 124 Stat. 4086 (January 4, 2011).

[5] The PSEA also included a restriction on disabling or altering of factory-equipped alert sounds. NHTSA implemented that PSEA restriction separately in paragraph S8 of FMVSS No. 141.

[6] See Final Rule, 81 FR 90416, at p. 90472.

[7] 78 FR 2798.

**Discussion**

*Sameness Requirement*

The ''Sameness'' provision appears in section 3(2) of the PSEA and states that the federal regulation created pursuant to the PSEA ''shall allow manufacturers to provide each vehicle with one or more sounds that comply with the motor vehicle safety standard at the time of manufacture.'' Section 3(2) further states that the regulation ''shall require manufacturers to provide, within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model.''

NHTSA interpreted this section of the PSEA to mean that a manufacturer may choose to equip a vehicle with different sounds for different operating modes, including stationary, reverse, and forward at 10 km/h, 20 km/h, and 30 km/h.[8] However, in the December 2016 final rule, NHTSA did not interpret this language to mean vehicles can be equipped with more than one alert sound for a given operating condition and speed.

Consequently, NHTSA did not include any provision in either the NPRM or final rule allowing for more than a single alert sound per operating mode. Instead, FMVSS No. 141 requires that any two vehicles of the same make and model to which the standard applies must have the same alert sound when operating under the same test conditions and the same speed.[9]

*Alliance/Global Petition*

In their January 2017 petition, Alliance/Global stated that NHTSA adopted an inflexible approach to ensuring sameness and did not account for specific statutory language in the PSEA that permits multiple alert sounds per vehicle. Specifically, Alliance/Global believe the words ''one or more sounds'' in Section 3(2) of the PSEA provide this flexibility and that NHTSA's final rule was inconsistent with this. Alliance/Global stated that providing a selection of sounds is essential for customer acceptance of HEVs: ''Satisfying our customers is a primary concern for OEMs [Original Equipment Manufacturers]. Since 'one size does not fit all' neither will one alert sound for a given make, model, trim level and model year satisfy all those consumers purchasing all these same vehicles.'' The petition also discussed comments submitted to the agency in February 2014 jointly by the Alliance, Global, the American Council of the Blind (ACB), and the National Federation of the Blind (NFB), in which the commenters, including the two advocate organizations, recognized the need to provide consumers with a reasonable number of driver-selectable sound choices for customer acceptance reasons.

Alliance/Global submitted a follow-up letter[10] dated March 1, 2017, to supplement their petition. One aspect of the letter addressed the fact that the variety of alert sounds that manufacturers can create that comply with the safety standard is virtually unlimited due to the acoustic flexibility provided by the requirements in FMVSS No. 141. To address this concern, Alliance/Global stated that, in the event NHTSA amended FMVSS No. 141 to allow selectable sounds, they recommend a limit of five sounds per vehicle. They provided the following explanation: ''Because every additional driver-selectable choice of sound requires a separate certification test as well as a compliance test, the number of driver-selectable choices provided by manufacturers would naturally be limited for practical reasons. However, to address potential concerns that manufacturers might provide too many optional sounds, we recommend that the number of permitted driver-selectable sounds be limited to no more than five driver-selectable alert sounds for any make, model, trim level, model year vehicle.''

The Alliance and Global's January 2017 petition also discussed possible implications of paragraph S8 of FMVSS No. 141 regarding a selectable-sounds provision. Paragraph S8 implements part of Section 3(2) of the PSEA by prohibiting alteration of a factory-installed sound except in case of a vehicle repair or recall.[11] The Alliance/Global petition states, ''The ability to permit customers to select different compliant sounds from a set of driver-selectable compliant sounds does not violate the PSEA restrictions against disabling, altering, replacing, or modifying the sound or set of sounds. Specifically, as long as the customer is selecting a sound that is among the 'set of sounds' provided by the manufacturer when the car is new, then the driver is not modifying the 'set' by selecting sounds provided within the 'set.' ''

*NHTSA Proposal and Request for Comments*

After considering the Alliance/Global petition, and recognizing that the language of the PSEA regarding sameness of sounds among vehicles of the same make and model is subject to more than one interpretation, and also that consumer preferences for vehicle alert sounds will depend on subjective factors, NHTSA has decided to propose amending FMVSS No. 141 to allow an unlimited number of pedestrian alert sounds per vehicle for any operating condition. (As previously stated, the different operating conditions are when the vehicle is stationary, in reverse, or moving forward at speeds up to 30 km/h.)

This proposal would also improve international harmonization by aligning FMVSS No. 141 more closely with international regulations, particularly United Nations ECE Regulation No. 138 for Audible Vehicle Alerting Systems, which states ''a vehicle manufacturer may define alternative sounds which can be selected by the driver.'' The ECE regulation does not specify a particular limit on the number of alternative sounds that may be provided.

The agency believes that allowing for an additional number of sounds will have no effect on safety, since all sounds would still need to comply with the standard. NHTSA notes that the Alliance/Global petition recommended up to five sounds per operating condition. The agency requests comment on this suggestion and any other appropriate limit.

In summary, NHTSA is seeking comment from all interested parties on amending the ''Sameness'' requirement, section S5.5.1 of FMVSS No. 141, which currently allows only one sound, to allow multiple sounds per operating condition for each model, model year, trim, and body style of HEV. Specifically, NHTSA requests comment and supporting information on any safety implications, compliance issues, consumer-acceptance factors, cost issues, or other possible alternatives that would accompany allowing an unlimited number of compliant driver-selectable sounds in FMVSS No. 141.

In particular, NHTSA seeks comment on the potential safety issues related to HEV recognition by pedestrians if a multitude of new compliant driver-

[8] See NHTSA NPRM [78 FR 2798], p. 2804.

[9] Section S5.5.1 of FMVSS No. 141, as published in December 2016, allowed the alert sound to vary by model year as well as make and model (see 81 FR 90472). This was further amended on February 26, 2018, to allow alert sounds to vary by trim level and body style within a make/model/model year (see 83 FR 8189).

[10] Docket No. NHTSA–2016–0125–0016.

[11] The Alliance/Global petition requested a small change to paragraph S8 of FMVSS No. 141 so that vehicle repairs to a module that controls both the pedestrian alert system and other vehicle systems would not violate the prohibition on alterations to the alert system. NHTSA granted their request on this point in the agency's February 2018 petition response by adopting minor edits to paragraph S8 as suggested by Alliance/Global.

selectable sounds are available, and the extent to which having an unlimited number of sounds would lead to the potential for a pedestrian's inability to identify the sounds as a motor vehicle.

As to the remaining aspects of the Alliance/Global petition, NHTSA is not proposing any change to paragraph S8 of FMVSS No. 141 and believes amending S5.5.1 as proposed in this notice will fully address the Alliance/Global petition on driver-selectable sounds. The requirements in S8 still would apply to the set of selectable sounds provided by the OEM, *i.e.,* aftermarket modification of the set of sounds would not be permitted except in allowable circumstances specified in section S8, such as vehicle repairs and recalls.

**Technical Clarification and Correction**

NHTSA recently became aware that the procedure in FMVSS No. 141 for evaluating ambient noise during compliance tests is unclear. The Alliance and Global raised this issue in an April 2018 letter along with several other FMVSS No. 141 technical concerns.[12] The ambient noise correction procedure at issue is in section S6.7.3.

This paragraph indicates that the one-third octave band levels of the ambient noise recording that are used for correction of vehicle measurements are the individual minimum levels in each one-third octave at any point in time over the 60-seconds of recorded ambient noise. This incorrectly implies that the levels of different one-third octave bands may be evaluated at different times. This was not NHTSA's intention. The correct method intended by the agency is to evaluate ambient levels of all 13 one-third octave bands at the same point in time. The point in time at which ambient one-third octave bands are supposed to be evaluated is the unique point during the 60 seconds when the overall sound pressure level of the ambient is at a minimum, as identified in S6.7.2, the preceding step in the ambient correction procedure.

To resolve this, NHTSA is proposing to amend paragraph S6.7.3 to more clearly state the intended method of evaluating one-third octave bands for ambient correction. A proposed rewording of section S6.7.3 that would implement this change is included at the end of this document. The agency invites all interested parties to comment on this change.

Additionally, NHTSA has become aware of a minor correction that is needed in the phase-in reporting requirements of FMVSS No. 141. The FMVSS No. 141 final rule published in December 2016 required vehicle manufacturers to report on their production of compliant HEVs during a one-year phase-in period. (This kind of reporting requirement is standard practice for NHTSA rules that include a phase-in period.) The reporting requirements and associated due dates for phase in of compliance with FMVSS No. 141 are contained in 49 CFR 585, Subpart N. NHTSA has determined that the December 2016 rule amending Part 585, Subpart N, states in two places, ''the production year ending August 31, 2018'' instead of ''the production year ending August 31, 2019.'' When NHTSA granted a petition to extend the FMVSS No. 141 phase-in and compliance deadlines by one year,[13] the reporting dates in Part 585, Subpart N, were all adjusted by adding one year. However, because those two dates were stated incorrectly in the original final rule, the adjusted dates also were off by one year. In this notice, NHTSA is making the necessary changes to 49 CFR 585, Subpart N, to specify that phase-in reporting applies to the production year ending August 31, 2020. The corrected regulatory text, is included at the end of this document.

**Rulemaking Analyses and Notices**

*A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation Order 2100.6, ''Policies and Procedures for Rulemakings.'' This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' Given the minimal impact of the rule, in accordance with the Department's regulatory policies and procedures, we have not prepared a full regulatory evaluation.[14] The agency has further determined that the impact of this proposed rule is so minimal that the preparation of a full regulatory evaluation is not required.

This proposed rule responding to a petition for reconsideration does not add any cost, as it would afford manufacturers additional flexibility in designing their vehicles to meet customer acceptance goals. It would not add new requirements or increase design or production burden for vehicle manufacturers.

This proposal, if adopted, would remove a final-rule restriction on vehicle design that auto manufacturers in the U.S. have sought to remove. This amendment also would give manufacturers of hybrid and electric vehicles greater flexibility in marketing those vehicles to consumers and make vehicles potentially more appealing to consumers by providing customer choice in selecting vehicle sounds.

The benefits and cost savings of this proposed rule are expected to exceed any increase in costs to manufacturers if they choose to create additional sounds. The proposal would allow manufacturers to equip vehicles with additional sounds but would not require it. If this proposal is finalized, a manufacturer would still be able to comply with FMVSS No. 141 by equipping a vehicle with a single sound.

The proposed rule provides manufacturers with more flexibility and options in developing and installing sounds for their hybrid and electric vehicles. NHTSA believes it is reasonable to assume that manufacturers would not utilize the flexibilities provided by the proposal to develop and install additional selectable sounds unless the benefits to them exceed the costs to them. Likewise, NHTSA believes it is reasonable to assume that consumers would not purchase vehicles with additional sounds unless the benefits to them exceed any additional cost of the vehicle. At the same time, the proposal would not have any effect on safety, as all sounds would still need to comply with the standard.

*B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory

[12] See Docket item no. NHTSA–2018–0018–0004.

[13] 83 FR 8182, published Feb. 26, 2018.

[14] Department of Transportation, *Adoption of Regulatory Policies and Procedures,* 44 FR 11034 (Feb. 26, 1979).

Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. This proposed rule would directly impact manufacturers of hybrid and electric vehicles. Most manufacturers affected by this proposed rule are not small businesses. To the extent any manufacturers of hybrid or electric vehicles are small businesses, we do not believe this proposed rule would have a significant economic impact on any small businesses as this proposed rule would not impose any costs on manufacturers but would instead increase flexibility for vehicle manufacturers.

*C. Executive Order 13132 (Federalism)*

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would 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.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rulemaking action could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's proposed rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

*D. Executive Order 13771 (Regulatory Reform)*

NHTSA has reviewed this proposed rule for compliance with E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs''), which requires Federal agencies to offset the number and cost of new regulations through the repeal, revocation, or revision of existing regulations. As provided in OMB Memorandum M–17–21 (''Implementing E.O. 13771''), a ''regulatory action'' subject to E.O. 13771 is a significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. For the reasons identified in the previous sections, this proposed rule is not a significant regulatory action under E.O. 12866.

Furthermore, this proposal is a ''deregulatory action'' under E.O. 13771 because, as discussed above, it would reduce regulatory burden on industry by allowing design flexibility by giving manufacturers the option to use selectable sounds. Also, it would improve international harmonization by aligning more closely with international regulations, particularly United Nations ECE Regulation No. 138 for Audible Vehicle Alerting Systems.

*E. Executive Order 12988 (Civil Justice Reform)*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes that the issue of preemption is discussed separately in this notice. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

*F. Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1)

Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This notice is part of a rulemaking that is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

*G. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any new information collection requirement associated with this proposed rule.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.'' Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the SAE International, and the American National Standards Institute. If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this proposed rule.

*I. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This proposed rule would not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

*J. National Environmental Policy Act*

NHTSA analyzed the original FMVSS No. 141 final rule for the purposes of the National Environmental Policy Act. The agency determined that implementation of that rule would not have any significant impact on the quality of the human environment.[15]

The rulemaking action in this notice would amend the FMVSS No. 141 final rule in a way that would not change the impact for the purposes of the National Environmental Policy Act. Therefore, the agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

*K. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*L. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**List of Subjects**

*49 CFR Part 571*

Minimum sound requirements for hybrid and electric vehicles; Phase-in reporting requirements.

*49 CFR Part 585*

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration proposes to amend 49 CFR parts 571 and 585 as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.141 by revising paragraph S5.5.1 and S6.7.3 to read as follows:

### § 571.141 Standard No. 141; Minimum Sound Requirements for Hybrid and Electric Vehicles

* * * * *

S5.5 *Sameness Requirement*

S5.5.1 Any two vehicles of the same make, model, model year, body type, and trim level (as those terms are defined in 49 CFR 565.12 or in section S4 of this safety standard) to which this standard applies shall be designed to have the same pedestrian alert sound or set of sounds, when operating under the same test conditions and at the same speed within the range of test conditions and speeds for which an alert sound is required in Section S5 of this safety standard.

* * * * *

S6.7.3 For each microphone, compute an ambient level for each of the 13 one-third octave bands using the time that is associated with the

[15] Docket item no. NHTSA–2016–0125–0009, *https://www.regulations.gov/document?D=NHTSA-2016-0125-0009.*

minimum A-weighted overall ambient identified in S6.7.2.

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## PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 3. The authority citation for part 585 continues to read/is revised to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 4. Revise § 585.132 to read as follows:

### § 585.132 Response to Inquiries.

At any time during the production year ending August 31, 2020, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

■ 5. Amend § 585.133 by revising paragraph (a) to read as follows:

### § 585.133 Reporting requirements.

(a) Phase-in reporting requirements. Within 60 days after the end of the production year ending August 31, 2020, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 141 Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141) for its vehicles produced in that year. Each report shall provide the information specified in paragraph (b) of this section and in § 585.2 of this part.

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Issued on September 10, 2019 in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

**James Clayton Owens,**

*Acting Administrator.*

[FR Doc. 2019–19874 Filed 9–16–19; 8:45 am]

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## SURFACE TRANSPORTATION BOARD

## 49 CFR Parts 1002, 1111, 1114, and 1115

**[Docket Nos. EP 755; EP 665 (Sub-No. 2)]**

## Final Offer Rate Review; Expanding Access to Rate Relief

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Surface Transportation Board (STB or Board) proposes a new procedure for challenging the reasonableness of railroad rates in smaller cases. In this procedure, the Board would decide a case by selecting either the complainant's or the defendant's final offer, subject to an expedited procedural schedule that adheres to firm deadlines.

**DATES:** Comments on the proposed rule are due by November 12, 2019. Reply comments are due by January 10, 2020.

**ADDRESSES:** Comments and replies in either or both dockets may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 755 and/or Docket No. EP 665 (Sub-No. 2), 395 E Street SW, Washington, DC 20423–0001. Comments and replies will be posted to the Board's website at *www.stb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** In January 2018,[1] the Board established its Rate Reform Task Force (RRTF), with the objectives of developing recommendations to reform and streamline the Board's rate review processes for large cases, and determining how to best provide a rate review process for smaller cases. After holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (RRTF Report).[2] Among other recommendations, the RRTF included a proposal for a final offer procedure, which it described as ''an administrative approach that would take advantage of procedural limitations, rather than substantive limitations, to constrain the cost and complexity of a rate reasonableness case.'' RRTF Report 12. Versions of a final offer process for rate review have also been recommended by the U.S. Department of Agriculture (USDA) and a committee of the Transportation Research Board (TRB). The Board now proposes to build on the RRTF recommendation and establish a new rate case procedure for smaller cases, the Final Offer Rate Review (FORR) procedure.

### Background

In the ICC Termination Act of 1995 (ICCTA), Congress directed the Board to ''establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost [(SAC)] presentation is too costly, given the value of the case.'' Public Law 104–88, 109 Stat. 803, 810. In the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Public Law 114–110, 129 Stat. 2228, Congress revised the text of this requirement so that it currently reads: ''[t]he Board shall maintain *1 or more* simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full [SAC] presentation is too costly, given the value of the case.'' 49 U.S.C. 10701(d)(3) (emphasis added). In addition, section 11 of the STB Reauthorization Act modified 49 U.S.C. 10704(d) to require that the Board ''maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates.'' [3] More generally, the rail transportation policy states that, in regulating the railroad industry, it is the policy of the United States Government ''to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.'' 49 U.S.C. 10101(15).

In 1996, the Board adopted a simplified methodology, known as Three-Benchmark, which determines the reasonableness of a challenged rate using three benchmark figures. *Rate Guidelines—Non-Coal Proceedings,* 1 S.T.B. 1004 (1996), *pet. to reopen denied,* 2 S.T.B. 619 (1997), *appeal dismissed sub nom. Ass'n of Am. R.Rs.* v. *STB,* 146 F.3d 942 (D.C. Cir. 1998). A decade passed without any complainant bringing a case under that methodology. In 2007, the Board modified the Three-Benchmark methodology and also created another simplified methodology, known as Simplified-SAC, which determines whether a captive shipper is being forced to cross-subsidize other parts of the railroad's network. *See Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir.), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009). In 2013, the Board increased the relief available under the

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] The RRTF Report was posted on the Board's website on April 29, 2019, and can be accessed at *https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf.*

[3] Prior to the enactment of the STB Reauthorization Act, section 10704(d) began with a sentence stating that, ''[w]ithin 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates.'' *See, e.g.,* 49 U.S.C. 10704(d) (2014).

Three-Benchmark methodology and removed the relief limit on the Simplified-SAC methodology, among other things. *See Rate Regulation Reforms,* EP 715 (STB served July 18, 2013), *remanded in part sub nom. CSX Transp., Inc.* v. *STB,* 754 F.3d 1056 (D.C. Cir. 2014). Notwithstanding the Board's efforts to improve its rate review methodologies and make them more accessible, only a few Three-Benchmark cases have ever been brought to the Board, and no complaint has been litigated to completion under the Simplified-SAC methodology.

The Board has recognized that, for smaller disputes, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case. *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2), slip op. at 10 (STB served Aug. 31, 2016). As the Board stated in *Simplified Standards,* ''[f]or some shippers who have smaller disputes with a carrier, even [Simplified-SAC] would be too expensive, given the smaller value of their cases. These shippers must also have an avenue to pursue relief.'' *Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 16. Along similar lines, as the Board has previously stated, simplified procedures ''enable the affected shippers to avail themselves of their statutory right to challenge rates charged on captive rail traffic regardless of the size of the complaint.'' *Non-Coal Proceedings,* 1 S.T.B. at 1057.[4]

In public comments, shippers and other interested parties have repeatedly stated that the Board's current options for challenging the reasonableness of rates do not meet their need for expeditious resolution at a reasonable cost.[5] Moreover, because a contract rate may not be challenged before the Board, 49 U.S.C. 10709(c)(1), some complainants[6] shift from contract rates to tariff rates before bringing a rate case, and tariff rates may be higher than prior contract rates.[7] That factor gives complainants a strong interest in having a rate case decided quickly, from start to finish.

Accordingly, the Board has continued to explore ideas to improve the accessibility of rate relief. *See, e.g., Expanding Access to Rate Relief,* EP 665 (Sub-No. 2), slip op. at 11–23. Among the comments submitted in Docket No. EP 665 (Sub-No. 2), the Board received a suggestion from USDA that the Board consider procedural limitations to streamline and expedite its rate reasonableness review as an alternative to substantive limitations. *See* USDA Reply Comments 5–6, Dec. 19, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2). USDA specifically recommended a short procedural timeline as a means to make rate reasonableness review accessible for smaller disputes. *See id.* To implement this recommendation, USDA suggested that the Board adopt a final offer procedure whereby parties would submit market dominance and rate reasonableness evidence in a single package offer. *See id.* at 6–7.

The Board uses a final offer procedure as part of the Three-Benchmark methodology, although it is only one part of the rate reasonableness approach as opposed to providing the overall framework, as the Board is proposing here.[8] One of the benchmarks compares the markup paid by the challenged traffic to the average markup assessed on similar traffic. *See, e.g., Rate Regulation Reforms,* EP 715, slip op. at 11. To improve the efficiency of this part of the Three-Benchmark methodology and ''enable a prompt, expedited resolution of the comparison group selection,'' the Board requires each party to submit its final offer comparison group simultaneously, and the Board chooses one of those groups without modification. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 18.

The Board has held that it may not require arbitration of rate disputes under current law,[9] and it is not proposing to do so here; instead, *the Board* would make the determination of rate reasonableness as it does under the Board's current options for challenging the reasonableness of rates. However, the benefits of *final offer* procedures used in other settings offer support and background for the Board's proposal. For example, final offer procedures are used in commercial settings, including the resolution of wage disputes in Major League Baseball, and final offer arbitration is therefore sometimes referred to as ''baseball arbitration.'' *See, e.g.,* Josh Chetwynd, *Play Ball? An Analysis of Final-Offer Arbitration, Its Use in Major League Baseball, & Its Potential Applicability to European Football Wage & Transfer Disputes,* 20 Marq. Sports L. Rev. 109 (2009) (noting the final offer procedure ''can lead to a win-win situation as it spurs negotiated settlement at a very high rate''); *see also* Michael Carrell & Richard Bales,

[4] *See also, e.g., Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I R.Rs.,* 6 S.T.B. 798, 803 & n.19 (2003) (''We have had to sacrifice some accuracy for simplicity where necessary to ensure that our rate complaint processes are accessible to shippers. . . . Towards that end, we have adopted simplified evidentiary procedures for adjudicating rate reasonableness in those cases where more sophisticated procedures are too costly or burdensome, 'to ensure that no shipper is foreclosed from exercising its statutory right to challenge the reasonableness of rates charged on its captive traffic.' '') (quoting *Non-Coal Proceedings,* 1 S.T.B. at 1008); *Market Dominance Determinations—Prod. & Geographic Competition,* 3 S.T.B. 937, 949 (1998) (excluding product and geographic competition from consideration in market dominance determinations so as to ''remove a substantial obstacle to the shippers' ability to exercise their statutory rights.'').

[5] *See, e.g.,* Alliance for Rail Competition Opening Comments 22, June 26, 2014, *Rail Transp. of Grain, Rate Regulation Review,* EP 665 (Sub-No. 1) (stating that the Three-Benchmark methodology is too costly and complex for grain shippers and producers in its current form); W. Coal Traffic League Opening Comments 74–76, Oct. 23, 2012, *Rate Regulation Reforms,* EP 715 (the cost and complexity of the Simplified-SAC methodology discourage its use); *Oversight of the STB Reauthorization Act of 2015 Before the Subcomm. on R.Rs., Pipelines, & Hazardous Materials of the H. Comm. on Transp. & Infrastructure,* 115th Cong. (2018) (letter from Chris Jahn, President, The Fertilizer Institute, submitted for the record) (due to the time and expense needed to pursue a rate case, it ''does not work'' for most complainants).

[6] Paying a transportation rate is not the only way to establish standing to bring a rate case, and the Board has previously provided guidance in a policy statement for ''complainants that allege indirect harm in rate complaints.'' *See Rail Transp. of Grain, Rate Regulation Review,* EP 665 (Sub-No. 1) et al., slip op. at 7–8 (STB served Dec. 29, 2016).

[7] As an example, the most recent rate proceeding involved a complainant that had been served pursuant to contracts for many years and then filed its complaint as soon as its contract expired. *See* Consumers Energy Co. Complaint 4–5, Jan. 13, 2015, *Consumers Energy Co.* v. *CSX Transp., Inc.,* NOR 42142; *see also, e.g.,* Occidental Chem. Corp. Comments 2–4, Oct. 23, 2012, *Rate Regulation Reforms,* EP 715 (paying the tariff rate for extended periods of time while a rate case is litigated—which can add millions of dollars in costs beyond the direct costs of litigation—undermines the utility of a rate challenge, especially if the carrier requires that all rates bundled with the challenged rate also shift to tariff during the pendency of the case); PPG Indus., Inc. Comments 3–4, Oct. 23, 2012, *Rate Regulation Reforms,* EP 715 (noting the effect of bundling and stating that tariff premium could reach $20 million per year of rate litigation). The latter two cites are simply to illustrate the need for expedited rate reasonableness procedures, and not to take a position—one way or another—on the appropriateness of rate bundling.

[8] The Three-Benchmark methodology also includes more procedural steps and a longer timeline than the FORR procedure proposed here. *See* 49 CFR 1111.10(a)(2).

[9] *See Arbitration—Various Matters,* EP 586, slip op. at 3 n.7 (STB served Sept. 20, 2001); *see also* 49 U.S.C. 10704(a)(1) (rate prescriptions require an order from the Board); 49 U.S.C. 11704(c)(2) (reparations require an order from the Board). The Board has had a *voluntary* arbitration process in place for more than 20 years, and section 13 of the STB Reauthorization Act required adjustments to this process (including the addition of rate disputes to the types of matters eligible for arbitration), but to date parties have not agreed to arbitrate a dispute brought before the Board. *See Arbitration of Certain Disputes,* 2 S.T.B. 564 (1997) (adopting voluntary arbitration program); *Revisions to Arbitration Procedures,* EP 730 (STB served Sept. 30, 2016) (making adjustments required by STB Reauthorization Act). In addition to its recommendation for a final offer procedure that would culminate in a decision by the Board, the RRTF recommended legislation that would permit mandatory arbitration of smaller rate cases. *See* RRTF Report 14–15.

*Considering Final Offer Arbitration to Resolve Public Sector Impasses in Times of Concession Bargaining,* 28 Ohio St. J. on Disp. Resol. 1, 3, 16, 23–24 (2012) (noting that fourteen states had codified some form of final offer arbitration for certain labor disputes involving public sector employees and noting that the procedure ''encourages the parties to negotiate toward middle ground rather than staking out polar positions'' and ''encourages the parties to settle before arbitration'').

Similarly, the Association of American Railroads' Circular No. OT–10, ''Code of Car Service Rules/Code of Car Hire Rules,'' sets forth a final offer procedure for car hire arbitration, which is included in Rule 25 (the Arbitration Rule). *See* Circular No. OT–10, Rule 25, *https://www.railinc.com/rportal/documents/18/260773/OT-10.pdf.* The Board has described the Arbitration Rule as an ''integral part'' of its deregulation of car hire rates. *See Joint Pet. for Rulemaking on R.R. Car Hire Comp.,* EP 334 (Sub-No. 8) et al., slip op. at 1 (STB served Apr. 22, 1997). And as noted by the Board's predecessor agency, the Interstate Commerce Commission (ICC), the Arbitration Rule ''provides for negotiation and, when that is not successful, 'baseball style' arbitration, by which the arbitrator will select between the best final offers of the parties.'' *Joint Pet. for Rulemaking on R.R. Car Hire Comp.,* 9 I.C.C.2d 80, 88 (1992).

Finally in this regard, the Committee for a Study of Freight Rail Transportation and Regulation of the TRB (TRB Committee) [10] released a report in 2015 that described the benefits of adopting ''an independent arbitration process similar to the one long used for resolving rate disputes in Canada.'' [11] In particular, the TRB Committee recommended ''a final-offer rule,'' set on a ''strict time limit,'' whereby ''each side offers its evidence, arguments, and possibly a changed rate or other remedy in a complete and unmodifiable form after a brief hearing.'' *TRB Committee Report* 211–12. According to the *TRB Committee Report,* adoption of such a procedure could enhance complainants' access to rate reasonableness protections, while expediting dispute resolution and encouraging settlements. *Id.* at 212.

*Proposed Rule.* The RRTF stated that there is substantial merit to USDA's general recommendation to improve access using procedural limitations, RRTF Report 16, and the Board agrees. USDA points out that, in addition to reducing the length and cost of litigation, ''[a] limited amount of time to collect and present evidence forces parties to focus their time on only the clearest and most important evidence,'' and ''the decision of what evidence to use or leave out is contextualized within each case.'' USDA Reply Comments 6, Dec. 19, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2).

The Board also agrees with the RRTF and USDA that a final offer approach could be an effective way to implement procedural limitations. As USDA notes, Dr. Richard L. Schmalensee, chair of the TRB Committee, recommended that the Board seek process improvements based on the final offer arbitration procedure used in Canada. *See* Tr. 24–25, Public Roundtable, Oct. 25, 2016 (emphasizing the importance of time limits and raising the idea that, among other things, the Board retain final authority over the outcome of a proceeding).[12] The *TRB Committee Report* also outlined several advantages of a final offer approach—for example, ''[t]he imposition of time limits is intended to bring economy to the process and to ensure that shippers are not precluded from access to rate relief as a consequence of slow processing and high litigation costs,'' and ''the time limit in conjunction with the final-offer rule injects uncertainty into the process, which limits the likelihood that any one party will take an extreme position and encourages the settlement of disputes.'' *TRB Committee Report* 138. And the Board stated in *Simplified Standards* that ''[a] final offer procedure for determining the comparison group is in the public interest because it will encourage both parties to submit a reasonable comparison group. Any final tender that is skewed too far in one direction might well result in the selection of a more reasonable final tender presented by the opposing party.'' *Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 18; *see also U.S. Magnesium, L.L.C.* v. *Union Pac. R.R.,* NOR 42114, slip op. at 9–12 (STB served Jan. 28, 2010) (selecting one party's comparison group as ''more reasonable'' while also recognizing that both parties' submissions were imperfect).

By lowering the costs of litigating smaller rate cases, the Board expects that complainants with smaller rate cases, who otherwise might have been deterred from challenging a rate due to the cost of bringing a case under the Board's existing rate reasonableness methodologies, would have a more accessible avenue for rate reasonableness review by the Board. The Board also expects that reduced litigation costs would make it possible for such complainants to prove meritorious cases. And, a final offer procedure may help to encourage private settlements of disputes, an outcome that was similarly suggested in the *TRB Committee Report.*

Accordingly, the Board proposes to establish a procedure similar to the one described by the RRTF: A final offer procedure to determine rate reasonableness for smaller cases, thereby providing faster, less costly review of claims of unreasonable railroad rates.

## I. Initiating a Proceeding and Discovery

Before the process formally begins, the complainant would be required to file with the Board and serve the defendant with a notice of intent to initiate a case, at least five days in advance of filing its complaint.[13] The

[10] In 2005, legislation was enacted directing the Secretary of Transportation to enter into an agreement with TRB ''to conduct a comprehensive study of the Nation's railroad transportation system.'' *See* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, section 9007, 119 Stat. 1144, 1925 (2005). The study was funded in 2011, H.R. Rep. No. 112–284, at 287 (2011), and the TRB Committee was formed, *see* Nat'l Acads. of Sciences, Eng'g, & Med., *Modernizing Freight Rail Regulation* (*TRB Committee Report*) at 12–13 (2015), *http://nap.edu/21759.*

[11] In a well-known process used by Canadian regulators, final offer procedures are administered by an outside arbitrator or panel of arbitrators. In Canada, a complainant may submit its rate dispute to the Canadian Transportation Agency, which refers the matter to an arbitrator or a panel of arbitrators. Canada Transp. Act, S.C. 1996, c. 10, as amended, sections 161(1), 162(1) (Can.). The Canadian statute establishes a two-tiered structure: If the matter involves freight charges of more than $2 million CAD (subject to an inflation adjustment), a 60-day procedure applies, and if the matter involves freight charges of $2 million CAD or less (subject to an inflation adjustment), a 30-day procedure applies. *Id.* sections 164.1, 165(2)(b). Among other things, the 60-day procedure allows the parties to direct interrogatories to one another, and the arbitrator may request written filings beyond the final offers and information initially submitted in support of final offers. *See id.* sections 163(4), 164(1). In the 30-day procedure, there is no discovery, and the arbitrator may request oral presentations from the parties but may not request written submissions beyond the final offers and replies. *See id.* section 164.1. The arbitrator's decision is issued within 60 days after the matter was submitted for arbitration, or 30 days if the further expedited procedure applies. *Id.* section 165(2)(b). Any resulting rate prescription is limited to two years, unless the parties agree to a different period. *See id.* section 165(2)(c).

[12] A transcript of this public roundtable is available on the Board's website at *https://www.stb.gov/stb/docs/eLibrary/InterVISTAS%20Economic%20Roundtable%20Transcript.pdf.*

[13] The Board would appoint a Board employee to serve as a case liaison within five business days after the pre-filing notification. *See Expediting Rate Cases,* EP 733, slip op. at 15 (STB served Nov. 30, 2017) (explaining the role of a Board-appointed liaison in rate cases). The liaison would be appointed sooner than in cases under Three-

proceeding would formally begin with the filing of a complaint. At the time it files its complaint, the complainant would also be required to submit the information listed in 49 CFR 1111.2(a)(1)–(11) [14] and provide to the defendant the materials described in § 1111.2(b).[15] The Board would not require the defendant to file an answer to the complaint [16] in cases under FORR, in light of the expedited timeline included in this procedure.

The filing of the complaint would also mark the beginning of discovery. No litigation over discovery disputes would be permitted. Instead, if a party unreasonably withholds information that the Board subsequently deems to be relevant, the Board would take that withholding into account in making its final decision.[17] If a party believes that relevant information was unreasonably withheld during discovery, it could so argue in the explanation accompanying its final offer, as described further below.

Parties should not expect to receive (or produce) the volume or even necessarily the types of discovery that parties have received in SAC cases, because the proposed time limits do not provide for it. Parties would instead submit narrowly tailored, targeted discovery requests based on the information that the other side could reasonably be expected to provide in a short period of time, focusing on the key information needed to prove or defend a rate case. Parties would be expected to interpret such discovery requests liberally to require the production of readily available information (relative to the discovery deadline) that they should reasonably know to be material and responsive to the request. If a party limits its requests as described above, and the other side still does not comply, as noted above, the requesting party could argue in the explanation accompanying its final offer that relevant information was unreasonably withheld. The Board would take that unreasonable withholding of relevant information into account in choosing between the offers—for example, by giving less weight to an argument that could be undercut by the information that was withheld or by making other adverse inferences. Over time, the Board anticipates that its decisions in FORR cases would establish categories of easily producible, core information that each side could be expected to request and produce within the truncated discovery period.

Although this procedure would not necessarily require the use of data from the Board's Waybill Sample, parties would be able to seek access to waybill data pursuant to the Board's regulations at 49 CFR 1244.9.[18] Up to four years of Waybill Sample data would be available—specifically, the most recent four years that can be provided as of the date of the complaint. *See Waybill Data Released in Three-Benchmark Rail Rate Proceedings,* EP 646 (Sub-No. 3), slip op. at 4–9 (STB served Mar. 12, 2012). A complainant would be required to submit its waybill data request pursuant to 49 CFR 1244.9(b)(4), if it chooses to make such a request, on the same day it files its notice of intent to initiate a case. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 78–80 (describing procedures for the release of Waybill Sample data to rate case litigants). A defendant would be required to submit its waybill data request pursuant to 49 CFR 1244.9(b)(4), if it chooses to make such a request, no later than one day after it is served with the complaint. The defendant would have the option of submitting its request at any time after complainant's filing of the notice of intent to initiate a case, until the deadline stated above—an option which, in effect, provides at least six days for a defendant to make a request. Based on these deadlines, the Board would process requests and provide the data no later than five business days after it receives the request for waybill data.

## II. Market Dominance Inquiry

In order to adjudicate the reasonableness of a rate, the Board must first find that the defendant rail carrier has market dominance over the transportation to which the rate applies. 49 U.S.C. 10707(c). Market dominance includes both a quantitative threshold and a qualitative analysis. *Total Petrochems. & Ref. USA, Inc.* v. *CSX Transp., Inc.,* NOR 42121, slip op. at 3 (STB served May 31, 2013). Under the proposed FORR procedure, market dominance would be evaluated separately from the parties' offers, as is the case with other rate reasonableness procedures. The Board proposes that the FORR procedure may only be used if the complainant also elects to use the streamlined market dominance approach proposed in Docket No. EP 756, *Market Dominance Streamlined Approach,* served concurrently with this decision. In that decision, the Board is proposing a streamlined market dominance approach for those cases in which a complainant can establish a prima facie case of market dominance by demonstrating six specified factors. *See Market Dominance Streamlined Approach,* EP 756, slip op. at 6–7 (STB served Sept. 12, 2019). Although the RRTF suggested that a streamlined market dominance approach may not be necessary for a final offer procedure given the time constraints that would accompany such a procedure, RRTF Report 17, the Board finds that the streamlined market dominance approach proposed in Docket No. EP 756 would complement and enhance the streamlined rate reasonableness procedure proposed here. Moreover, the expedited timelines proposed here may make it too difficult for parties to litigate a non-streamlined market dominance presentation.[19] Nevertheless, because there may be merit to giving complainants the option of choosing between streamlined and non-streamlined market dominance in FORR cases, parties may address this issue in their comments.

In a FORR case, the complainant would submit its showing as to the relevant factors identified in the Board's proposal in Docket No. EP 756 in its

Benchmark, Simplified-SAC, or SAC, consistent with the expedited nature of the proposed FORR procedure.

[14] If the defendant disagrees with the calculation of variable costs based on the complainant's inputs to the Uniform Railroad Costing System (URCS) Phase III program (*see* 49 CFR 1111.2(a)(1)–(9)), it could address this issue in its market dominance presentation. As is the case with market dominance determinations generally, movement-specific adjustments to URCS would not be permitted. *See, e.g., Major Issues in Rail Rate Cases,* EP 657 (Sub-No. 1), slip op. at 50–52 (STB served Oct. 30, 2006), *aff'd sub nom. BNSF Ry.* v. *STB,* 526 F.3d 770 (D.C. Cir. 2008).

[15] Section 1111.2(b) requires the complainant to ''provide to the defendant all documents relied upon in formulating its assessment of a feasible transportation alternative and all documents relied upon to determine the inputs to the URCS Phase III program.''

[16] The defendant would have an opportunity to file a reply to the complainant's market dominance presentation and final offer, as addressed below.

[17] A similar approach is used in the Canadian final offer procedure, discussed above. *See* Canada Transp. Act, S.C. 1996, c. 10, as amended, section 163(5) (Can.).

[18] The Board also intends to propose certain changes to its regulations relating to the Waybill Sample. *See* RRTF Report 47–49.

[19] As discussed in *Market Dominance Streamlined Approach,* the market dominance inquiry is often a costly and time-consuming undertaking, resulting in a significant burden on rate case litigants. For example, given the hypothetical nature of some competitive options proposed by defendant railroads in past cases, complainants essentially have to predict what a defendant railroad might argue regarding potential, but unused, competitive options—all without knowing precisely what constitutes a prima facie showing of an absence of effective competition. Parties' market dominance presentations in recent cases (throughout their filings) have been hundreds of pages long. *See, e.g., Consumers Energy Co.* v. *CSX Transp., Inc.,* Docket No. NOR 42142 (parties' market dominance presentations alone (throughout their filings) exceeded 200 pages of narrative discussion and included multiple expert reports).

market dominance presentation. The defendant carrier, in its reply, could try to refute any of the prima facie factors or otherwise demonstrate that effective competition exists for the traffic at issue. At the complainant's option, further discussion of market dominance could take place during a telephonic hearing before an administrative law judge (ALJ), as described below. In the event that the complainant opts for such a hearing, both sides would be permitted to present their market dominance positions at the hearing.

**III. Review Criteria for Final Offers**

Following discovery, parties would simultaneously submit their market dominance presentations and final offers, and each party would also submit an analysis addressing the reasonableness of the challenged rate and support for the rate in the party's offer.[20] Each party's final offer should reflect what it considers to be the maximum reasonable rate. *See* 49 U.S.C. 10704(a)(1). The party submitting the offer could choose how to present and support its offer, including the methodology it uses. The Board's criteria for determining rate reasonableness of and choosing between the offers [21] would be based on its consideration of the rail transportation policy in 49 U.S.C. 10101, the Long-Cannon factors in 49 U.S.C. 10701(d)(2), and appropriate economic principles.

Among other aspects of the rail transportation policy, the Board would take into account the policy ''to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail,'' the policy ''to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital,'' and the policy ''to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board.'' 49 U.S.C. 10101(1), (3), (6).

Furthermore, pursuant to the Long-Cannon factors, the Board would give due consideration to (i) the carrier's efforts to minimize traffic transported at revenues that do not contribute to going concern value, (ii) the carrier's efforts to maximize revenues from traffic that contributes only marginally to fixed costs, and (iii) whether one commodity is paying an unreasonable share of the carrier's overall revenues, all the while recognizing the policy that rail carriers earn adequate revenues. 49 U.S.C. 10701(d)(2).[22]

Finally, the Board would consider appropriate economic principles, and this general criterion would allow the Board to apply, among other things, the agency's expertise and general principles developed in its rate case precedent over decades. *See, e.g.,* R.R. Revitalization & Regulatory Reform Act of 1976, Public Law 94–210, 90 Stat. 31 (directing the ICC to ''give due consideration to appropriate economic principles'' in adopting new accounting system requirements relevant to its authorities); *see also Non-Coal Proceedings,* 1 S.T.B. at 1007 (''Our challenge is to reflect these economic and equitable principles, as best we can, in a practical, readily administrable test.''). As with the Board's other rate reasonableness procedures, the agency would consider the defendant railroad's need for differential pricing to permit it to collect adequate revenues. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 73.

If a party adopts a position that is contrary to these guiding criteria, it risks the likelihood that the Board would choose the other party's offer. In addition to the previously noted benefits of a final offer procedure with expedited time limits, most notably its bringing economy to rate cases and encouraging the parties to take reasonable positions, the Board expects that the criteria here—the rail transportation policy, the Long-Cannon factors, and appropriate economic principles—allow for the parties to submit final offers using their preferred methodologies, including revised versions of the Board's existing rate review methodologies or new methodologies altogether. These principle-based, non-prescriptive criteria are intended to allow for innovation with respect to rate review methodologies, and the use and creation of precedent through an adversarial process simultaneously creates incentives for methodological improvements over time (while overall complexity is constrained by procedural limitations and reasonableness is encouraged by a final offer selection structure).[23]

**IV. Final Offers, Market Dominance Presentations, Replies, and ALJ Hearing**

With its final offer, each party would be required to submit an analysis addressing the reasonableness of the challenged rate and support for the rate in the party's offer,[24] including an explanation of the methodology it used and how it complies with the criteria discussed above, as well as any necessary supporting workpapers.[25] Ten days after submitting market dominance presentations, rate reasonableness analyses, and final offers, the parties would simultaneously submit replies to each other's presentations. On reply, parties would not be permitted to alter their market dominance presentations, rate reasonableness analyses, or final offers but would have an opportunity to argue against the other side's submission.

One week after the submission of replies, at the complainant's option, the parties would participate in a telephone hearing before an ALJ. The purpose of this hearing would be to complete the record regarding market dominance, and the transcript of this hearing would be part of the administrative record submitted to the Board for decision. The complainant, if it chooses, may limit its written market dominance presentations to the six factors required for the prima facie showing—in that instance, at the

[20] Given the expedited timelines provided, the Board is not proposing to impose page limits at this time, beyond the 50-page limit proposed for replies in a streamlined market dominance presentation. *See Market Dominance Streamlined Approach,* EP 756, slip op. at 12. Consistent with the findings of the *TRB Committee Report,* the Board believes the expedited timelines would serve to control unnecessary submissions. Should the Board adopt this proposal, and if expedited timelines prove insufficient to control the scope of the issues presented, the Board may consider page limits either by rule or in individual proceedings at a later time.

[21] The Board ''may not set the maximum reasonable rate below the level at which the carrier would recover 180% of its variable costs of providing the service.'' *Major Issues in Rail Rate Cases,* EP 657 (Sub-No. 1), slip op. at 6.

[22] *See also, e.g., Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1), slip op. at 22 (STB served July 28, 2006) (discussing the first Long-Cannon factor); *Major Issues in Rail Rate Cases,* EP 657 (Sub-No. 1), slip op. at 18 (STB served Oct. 30, 2006) (discussing the second Long-Cannon factor); *Non-Coal Proceedings,* 1 S.T.B. at 1038 (discussing the third Long-Cannon factor).

[23] The Board also recognizes the expedited timelines of the proposed FORR procedure and accounts for that characteristic by setting a cap on relief, as described in Section VII of this decision.

[24] Since the parties' final offers should reflect what they each consider to be the maximum reasonable rate, a party's analysis regarding the reasonableness of the challenged rate would likely overlap with its support for its final offer.

[25] If spreadsheets are submitted, links between spreadsheets should be used to the maximum extent possible. If links are not practicable, hard-coded numbers may be used, but parties should include references to the relevant source document or method of calculation. *See, e.g., Gen. Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases,* EP 347 (Sub-No. 3) (STB served Mar. 12, 2001); *see also Consumers Energy Co.* v. *CSX Transp, Inc.,* NOR 42142 (STB served July 15, 2015) (adopting requirements for submission of evidence in that case). Under the proposed rule, if a party fails to submit documentation in a form the Board can use (for example, due to unlinked spreadsheets), that failure could contribute to rejection of that party's offer.

ALJ hearing, the complainant could address any additional market dominance arguments made by the defendant. As noted above, if the complainant opts for a hearing, both sides would be permitted to present their market dominance positions at the hearing. Within four days of the evidentiary hearing, a transcript of the hearing would be entered into the docket.

## V. Selection of an Offer

Pursuant to the Administrative Procedure Act, ''the proponent of a rule or order has the burden of proof.'' 5 U.S.C. 556(d). In a rate complaint proceeding, the complainant is the proponent of an order and therefore bears the burden. Accordingly, the complainant must demonstrate that (i) the defendant carrier has market dominance over the transportation to which the rate applies; and (ii) the challenged rate is unreasonable. *See* 49 U.S.C. 10701(d)(1), 10704(a)(1), 11704(b).

If the Board finds that the complainant's market dominance presentation and rate reasonableness analysis demonstrate that the defendant carrier has market dominance over the transportation to which the rate applies and that the challenged rate is unreasonable, the Board would then choose between the parties' final offers. In making the rate reasonableness finding and choosing between the offers, the Board would take into account the criteria described above.[26] As in the final offer procedure used as part of the Three-Benchmark methodology, this would be an ''either/or'' selection, with no modifications by the Board. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 18.[27] This approach would work as intended only if the parties know that the agency would not attempt to find a compromise position. *Id.* The incentives created by a final offer selection procedure could not be preserved if the Board retained the discretion to formulate its own ''offer.'' *Id.*[28]

[26] The standard applying to market dominance determinations would be as described in *Market Dominance Streamlined Approach,* Docket No. EP 756, cited above.

[27] Although the RRTF envisioned the possibility of a scenario where the offers have equal merit, RRTF Report 19, in fact, it is a defining characteristic of a final offer procedure that the decision-maker must choose between the offers. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 18; *see also, e.g.,* Carrell & Bales, *supra* **SUPPLEMENTARY INFORMATION** (''the arbitrator *must* choose the more reasonable of the parties' final proposals'') (emphasis added).

[28] *See also* Chetwynd, *supra* **SUPPLEMENTARY INFORMATION** (decision-makers' tendency to ''split the difference'' creates incentives for parties to take extreme positions).

The Board would issue a decision no later than 90 days after the deadline for the parties' replies. Petitions for reconsideration would be due five days after service of the Board's decision; replies to petitions for reconsideration would be due 10 days after service of the Board's decision; and the Board would issue its decision on reconsideration expeditiously after replies are filed.

## VI. Proposed Timeline

The following is the proposed timeline for this procedure.

| | |
|---|---|
| Day 5 ..... | Complainant files and serves notice of intent to initiate case. |
| Day 0 ..... | Complainant files complaint. |
| Day 0 ..... | Discovery begins. |
| Day 21 ..... | Discovery ends. |
| Day 35 ..... | Simultaneous filing of market dominance presentations, rate reasonableness analyses, and final offers. |
| Day 45 ..... | Simultaneous filing of replies. |
| Day 52 ..... | Optional telephone hearing before administrative law judge (market dominance). |
| Day 135 ..... | Board decision. |

This proposed timeline attempts to balance the need for due process—for example, allowing parties to reply to each other's submissions—and the Board's underlying goal of constraining the cost and complexity of rate litigation by limiting the time available. The Board specifically seeks comment on whether the proposed timeline strikes the appropriate balance.

To preserve the effects of the procedural limitations described above, requests for extensions of time would be strongly disfavored, even if both parties consented to the request. Therefore, parties would be encouraged not to spend the scarce time available under this procedure on preparing extension requests. Joint requests to allow time to negotiate a settlement, including joint requests for mediation, would be an exception and would be considered by the Board. A party would be permitted to accept the other party's final offer at any time.

Mediation is mandatory as part of the Board's existing rate reasonableness procedures. *See* 49 CFR 1109.4(a), 1111.10(a)(1), 1111.10(a)(2). The Board does not propose to require mediation as part of FORR because it would add time and possibly expense, but the Board would be prepared to facilitate mediation if requested by the parties. *See* 49 CFR 1109.2 (parties may request Board-sponsored mediation).

## VII. Relief

If the Board finds that the defendant carrier has market dominance, finds the challenged rate unreasonable, and chooses the complainant's offer (or the defendant's offer, if it is below the challenged rate), it could award relief based on the difference between the challenged rate and the rate in that offer. The proposed procedure would be subject to a two-year limit on rate prescriptions unless the parties agree to a different limit on relief. Such a limit would be one-fifth of the 10-year limit applied in SAC cases and less than half of the five-year limit applied in Simplified-SAC and Three-Benchmark cases (*see Expanding Access to Rate Relief,* EP 665 (Sub-No. 2), slip op. at 6), thereby accounting for the expedited deadlines of the FORR procedure. The Board could also award relief in the form of reparations. *See* 49 U.S.C. 11704(b).[29]

For certain of its other options for challenging the reasonableness of rates, the Board has also previously imposed monetary caps on relief. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 27–28. Such caps apply to an award of reparations, a rate prescription, or a combination of the two. Thus, any rate prescription automatically terminates once the complainant has exhausted the relief available, and the actual length of the prescription may be less than the period set by the Board if the relief is used up in a shorter time. Under such circumstances, the complainant would be barred from bringing another complaint against the same rate for the remainder of the prescription period set by the Board. *Id.; see also Rate Regulation Reforms,* EP 715, slip op. at 11–12 (STB served July 18, 2013).[30]

The Board established its prior caps based on the cost of litigating a case using the next more complicated and precise procedure: A cap on the Simplified-SAC methodology (later removed) was based on the cost to bring a SAC case, and a lower cap for the Three-Benchmark methodology was

[29] The standard reparations period reaches back to two years prior to the date of the complaint. RRTF Report 30; *see also* 49 U.S.C. 11705(c) (requiring that complaint to recover damages under 49 U.S.C. 11704(b) be filed with the Board within two years after the claim accrues).

[30] After the relief is exhausted, the carrier may raise the rate, and that new rate may be challenged. However, after the relief is exhausted, if the carrier keeps the rate at the challenged level—with appropriate adjustments for inflation using the rail cost adjustment factor, adjusted for inflation and productivity (RCAF–A)—the rate may not be challenged under any of the Board's rate reasonableness options until the two-year maximum prescription period has expired. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 28.

based on the cost to bring a Simplified-SAC case. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 28. In setting these limits, the Board attempted to strike a balance between providing simplified methods that permit complainants to seek protection from unreasonable rates, while encouraging use of the most precise approach feasible for the amount in dispute. *Id.* at 35; *see also id.* at 52 (explaining that this approach represents ''sound regulatory policy'' by balancing the impracticability of using a more complicated procedure given its cost against the impropriety of judging large disputes under what might be considered a less accurate methodology). In addition, adoption of the caps gave effect to Congress's directive that the Board weigh the litigation cost of a SAC presentation against the value of the case when establishing a simplified and expedited method for rate reasonableness challenges. *Id.* at 34; *see also id.* at 52 (explaining that the best ''method'' is the ''creation of separate processes for rail rate disputes of varying size'').

In keeping with 49 U.S.C. 10701(d)(3), as well as the Board's previously stated interest in channeling higher-value cases into appropriate procedures, there is merit in setting a cap for FORR by considering it within the framework of pre-existing rate reasonableness methodologies. Nevertheless, as described above, because FORR does not prescribe a particular methodology—nor a methodology necessarily less precise than any pre-existing procedure—the Board's prior rationale for capping relief based on the cost of the next more complicated procedure does not necessarily or neatly apply here.

Accordingly, the Board proposes to establish a relief cap of $4 million, as indexed annually using the Producer Price Index, which is consistent with the potential relief afforded under the Three-Benchmark methodology.[31] Applying a relief cap based on the estimated cost to bring a Simplified-SAC case would further the Board's intention that Three-Benchmark and FORR be used in the smallest cases, and applying the same $4 million relief cap, as indexed, would provide consistency in terms of defining that category of case.

Although the proposed FORR procedure is designed to apply to smaller cases (*i.e.,* proceedings for which the value of the case is subject to a certain relief cap), parties may wish to generally address whether the Board should establish different levels of relief and provide supporting rationale for such alternatives. As discussed above, final offer arbitration in Canada provides for two different procedural tracks. If the matter involves freight charges of $2 million CAD or less (subject to an inflation adjustment), an expedited ''summary'' procedure applies, and if the matter involves freight charges of greater than that amount, a longer procedure applies. *See* Canada Transp. Act, S.C. 1996, c. 10, as amended, section 164.1 (Can.). The Board might consider an approach that, for example, would permit a complainant submitting a FORR complaint to use the procedure described above if it seeks relief equal to or less than the $4 million cap proposed by the Board here. But, if the complainant were to seek relief above this amount (which, under the procedure described here, would be subject only to the two-year limit on rate prescriptions), a somewhat longer procedural schedule could apply. The Board invites comment on the advisability of such a two-tiered relief procedure in which the top tier contains no limit on the size of the relief, in total, including both reparations and the two-year prescription period.

Another alternative that parties may wish to address in comments is a relief cap based on record development time and value of the case. For example, this alternative could consider the potential relief available in a SAC case, reduced proportionally by the difference in record development time between a case brought under the proposed FORR procedure and one brought under SAC. The resultant proportionally reduced amount could be the relief cap applicable to cases under the FORR procedure.

## VIII. Other FORR Issues

The Board proposes that the FORR procedure would not be available to challenge purely local movements of a Class II or Class III rail carrier.[32] Rate cases filed to date indicate that complainants' rate concerns relate primarily to Class I carriers. As such, the Board sees no reason to apply these new rules to purely local movements of smaller carriers. *See, e.g.,* Am. Short Line & Reg'l R.R. Ass'n Comment 4–5, Feb. 26, 2007, *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1) (describing the impacts new rate reasonableness procedures would have on small railroads in particular). However, the FORR procedure would be available in challenges where the movement involves the participation of a Class I railroad as well as a Class II or Class III railroad. *See Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 101–02 (stating that excluding combined movements would shut out a significant portion of domestic rail traffic and could create perverse routing incentives). Parties may further address in their comments the applicability of this proposed rule to purely local movements of a Class II or Class III rail carrier.

Parties may also file comments as to whether and how the Board might provide assistance to parties—particularly smaller entities—regarding how best to utilize the proposed FORR procedure.

The Board acknowledges that the FORR procedure, by requiring that the Board select one of the parties' final offers without modification, constrains its flexibility in setting a maximum lawful rate. *See generally* 49 U.S.C. 10704(a) (authorizing the Board to ''prescribe'' a maximum rate should it find the rate charged by the carrier to be unreasonable). Also, by prohibiting litigation over discovery disputes, the FORR procedure would constrain the Board's ability to separately resolve one type of ancillary issue—although, as noted above, these issues may be raised in the explanations accompanying parties' final offers. The Board, however, concludes that these constraints would be justified by the cost and time savings it expects would be achieved through the use of the proposed procedure to challenge rate reasonableness for smaller cases, which in turn would assist the Board in maintaining reasonable rates. The existing options to challenge the reasonableness of rates (especially SAC), which allow the Board to craft individual responses to numerous issues (hundreds of issues, in some instances), are time-consuming and costly.

Finally, the Board seeks additional comments on Docket No. EP 665 (Sub-No. 2), including whether to close that docket. There, the Board provided notice that it was considering a new

[31] The relief cap would incorporate indexing that has previously been applied to the Three-Benchmark cap, so that the cap for FORR is the same as the cap for Three-Benchmark.

[32] Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $39,194,876 or less when adjusted for inflation using 2018 data. Class II rail carriers have annual operating revenues of less than $250 million but in excess of $20 million in 1991 dollars, or $489,935,956 and $39,194,876 respectively, when adjusted for inflation using 2018 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds in decisions and on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served June 14, 2019).

methodology that would utilize a comparison group approach to determine the reasonableness of the challenged traffic's rate, like the approach utilized by the Three-Benchmark methodology but more streamlined. *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2), slip op. at 12, 15, 23. As the RRTF explained, however, the Board received a number of negative comments regarding Docket No. EP 665 (Sub-No. 2), including arguments that the methodology discussed in that docket could increase the time and cost of litigation compared to bringing a Three-Benchmark case. *See, e.g.,* Am. Chemistry Council Opening Comments 7–9, Nov. 14, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2).

Within the due dates for comments set forth below, parties may also update their comments or submit new comments on Docket No. EP 665 (Sub-No. 2). If parties choose to submit comments that pertain both to Docket No. EP 665 (Sub-No. 2) and to the proposal made in Docket No. EP 755, they should submit those comments in both dockets. Moreover, the Board is aware that stakeholders have worked to create additional rate reasonableness methodologies. *See, e.g.,* Nat'l Grain & Feed Ass'n Opening Comments 27–35, June 26, 2014, *Rail Transp. of Grain, Rate Regulation Review,* EP 665 (Sub-No. 1); *Notice of Director's Decision,* WB 17–44 (STB served Apr. 17, 2018) (granting access to Waybill Sample data for the ''development, evaluation, and proposal'' of new rate reasonableness alternatives).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities, (2) analyze effective alternatives that may minimize a regulation's impact, and (3) make the analysis available for public comment. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

This proposal would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[33] The proposal imposes no additional record-keeping by small railroads or any reporting of additional information. Nor does this proposed rule circumscribe or mandate any conduct by small railroads that is not already required by statute: The establishment of reasonable transportation rates when a carrier is found to be market dominant. Although the Board predicts that the establishment of the FORR procedure would result in the filing of several additional complaints per year, small railroads have always been subject to rate reasonableness complaints and their associated litigation costs, the latter of which the Board expects would be reduced through the use of this proposed procedure. The new procedure proposed here would exclude purely local movements of Class III carriers, affecting only movements that also involve the participation of a Class I railroad. Finally, as the Board has previously concluded, the majority of railroads involved in these rate proceedings are not small entities within the meaning of the Regulatory Flexibility Act. *Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 33–34. Since the inception of the Board in 1996, only three of the 51 cases filed challenging the reasonableness of freight rail rates have involved a Class III rail carrier as a defendant. Those three cases involved a total of 13 Class III rail carriers. The Board estimates that there are approximately 656 Class III rail carriers. Therefore, the Board certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities as defined by the RFA.

This decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

[33] For the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting).

*Paperwork Reduction Act*

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), and in the Appendix, the Board seeks comments about the revisions in the proposed rule to the currently approved collection of Complaints (OMB Control No. 2140–0029) regarding: (1) Whether the collection of information, as modified in the proposed rule and further described below, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate.

The Board believes that the proposed procedure would provide a less burdensome alternative to other rate review options and estimates that it would, on balance, result in four additional complaints filed each year. Filing a complaint, generally, has been estimated to require an annual hour burden of 469 hours and an annual ''non-hour burden'' cost of $1,462. *See* Supporting Statement for Modification & OMB Approval Under the Paperwork Reduction Act & 5 CFR 1320, OMB Control No. 2140–0029 (Jan. 2018), available at *https://www.reginfo.gov/public/do/DownloadDocument?objectID=78860402.* For the reasons discussed above, filing a FORR complaint is likely to require less time and expenditure than other complaints. Accordingly, the Board estimates that this proposed procedure would entail an annual hour burden of 250 hours per complaint and an annual ''non-hour burden'' cost of $780 per complaint. Accounting for the projected four additional complaints per year, this proposal would result in an additional total annual hour burden of 1,000 hours and $3,120 of total annual ''non-hour burden'' cost under the PRA. The Board welcomes comment on the estimates of actual time and costs of the proposed alternative complaint, as detailed below in the Appendix. Other information pertinent to the proposed alternative complaint is also included in the Appendix. The proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11. Comments received by the Board regarding the information

collection will also be forwarded to OMB for its review when the final rule is published.

*It is ordered:*

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rule will be published in the **Federal Register**.

2. Comments are due by November 12, 2019. Reply comments are due by January 10, 2020.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its service date.

**List of Subjects**

*49 CFR Part 1002*

Administrative practice and procedure, Common Carriers, Freedom of information.

*49 CFR Part 1111*

Administrative practice and procedure, Investigations.

*49 CFR Part 1114*

Administrative practice and procedure.

*49 CFR Part 1115*

Administrative practice and procedure.

Decided: September 11, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

**Jeffrey Herzig,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1002, 1111, 1114, and 1115 of title 49, chapter X, of the Code of Federal Regulations as follows:

## PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Amend § 1002.2 by revising paragraph (f)(56) to read as follows:

**§ 1002.2 Filing fees.**

* * * * *

(f) * * *

| Type of proceeding | Fee |
|---|---|
| * * * * * * * | |
| PART V: Formal Proceedings: | |
| (56) A formal complaint alleging unlawful rates or practices of carriers: | |
| (i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) | $350. |
| (ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology | $350. |
| (iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology | $150. |
| (iv) A formal complaint involving rail maximum rates filed under the Final Offer Rate Review procedure | $150. |
| (v) All other formal complaints (except competitive access complaints) | $350. |
| (vi) Competitive access complaints | $150. |
| (vii) A request for an order compelling a rail carrier to establish a common carrier rate | $350. |
| * * * * * * * | |

* * * * *

## PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 3. The authority citation for part 1111 is revised to read as follows:

**Authority:** 49 U.S.C. 10701, 10704, 11701, and 1321.

■ 4. Amend § 1111.3 by revising paragraph (c) to read as follows:

**§ 1111.3 Amended and supplemental complaints.**

* * * * *

(c) *Simplified Standards.* A complaint filed under Simplified-SAC or Three-Benchmark may be amended once before the filing of opening evidence to opt for a different rate reasonableness methodology, among Three-Benchmark, Simplified-SAC, or stand-alone cost. If so amended, the procedural schedule begins again under the new methodology as set forth at §§ 1111.9 and 1111.10. However, only one mediation period per complaint shall be required. A complaint filed under Final Offer Rate Review may not be amended to opt for Three-Benchmark, Simplified-SAC, or stand-alone cost, and a complaint filed under Three-Benchmark, Simplified-SAC, or stand-alone cost may not be amended to opt for Final Offer Rate Review.

■ 5. Amend § 1111.5 by revising paragraphs (a), (b), (c), and (e) to read as follows:

**§ 1111.5 Answers and cross complaints.**

(a) *Generally.* Other than in cases under Final Offer Rate Review, which does not require the filing of an answer, an answer shall be filed within the time provided in paragraph (c) of this section. An answer should be responsive to the complaint and should fully advise the Board and the parties of the nature of the defense. In answering a complaint challenging the reasonableness of a rail rate, the defendant should indicate whether it will contend that the Board is deprived of jurisdiction to hear the complaint because the revenue-variable cost percentage generated by the traffic is less than 180 percent, or the traffic is subject to effective product or geographic competition. In response to a complaint filed under Simplified-SAC or Three-Benchmark, the answer must include the defendant's preliminary estimate of the variable cost of each challenged movement calculated using the unadjusted figures produced by the URCS Phase III program.

(b) *Disclosure with Simplified-SAC or Three-Benchmark answer.* The defendant must provide to the complainant all documents that it relied upon to determine the inputs used in the URCS Phase III program.

(c) *Time for filing; copies; service.* Other than in cases under Final Offer Rate Review, which does not require the filing of an answer, an answer must be filed with the Board within 20 days after the service of the complaint or within such additional time as the Board may provide. The defendant must serve copies of the answer upon the complainant and any other defendants.

* * * * *

(e) *Failure to answer complaint.* Other than in cases under Final Offer Rate Review, which does not require the filing of an answer, averments in a complaint are admitted when not denied in an answer to the complaint.

* * * * *

■ 6. Amend § 1111.10 by adding paragraph (a)(3) to read as follows:

**§ 1111.10 Procedural schedule in cases using simplified standards.**

(a) * * *

(3)(i) In cases relying upon the Final Offer Rate Review procedure:

(A) Day 5—Complainant files notice of intent to initiate case and serves notice on defendant.

(B) Day 0—Complaint filed; discovery begins.

(C) Day 21—Discovery closes.

(D) Day 35—Market dominance filings, rate reasonableness analyses, and final offers.

(E) Day 45—Replies.

(F) Day 52—Telephonic evidentiary hearing before an administrative law judge, as described in § 1111.12(e), at the discretion of the complainant (market dominance).

(G) Day 135—Board decision.

(ii) In addition, the Board will appoint a liaison within five business days after the Board receives the pre-filing notification.

(iii) With its final offer, each party must submit an explanation of the methodology it used.

* * * * *

■ 7. Amend § 1111.11 by revising paragraph (b) to read as follows:

**§ 1111.11 Meeting to discuss procedural matters.**

* * * * *

(b) *Stand-alone cost or simplified standards complaints.*

(1) In complaints challenging the reasonableness of a rail rate based on stand-alone cost, Simplified-SAC, or Three-Benchmark, the parties shall meet, or discuss by telephone or through email, discovery and procedural matters within 7 days after the complaint is filed in stand-alone cost cases, and 7 days after the mediation period ends in Simplified-SAC or Three-Benchmark cases. The parties should inform the Board as soon as possible thereafter whether there are unresolved disputes that require Board intervention and, if so, the nature of such disputes.

(2) In complaints challenging the reasonableness of a rail rate under Final Offer Rate Review, the parties may not seek Board intervention in discovery disputes, but the parties should discuss discovery matters with one another to the extent necessary.

## PART 1114—EVIDENCE; DISCOVERY

■ 8. The authority citation for part 1114 continues to read as follows:

**Authority:** 5 U.S.C. 559; 49 U.S.C. 1321.

■ 9. Amend § 1114.21 by adding paragraph (a)(4) to read as follows:

**§ 1114.21 Applicability; general provisions.**

(a) * * *

(4) Time periods specified in this subpart do not apply in cases under Final Offer Rate Review. Instead, parties in cases under Final Offer Rate Review should serve requests, answers to requests, objections, and other discovery-related communications within a reasonable time given the length of the discovery period.

* * * * *

■ 10. Amend § 1114.24 by revising paragraph (h) to read as follows:

**§ 1114.24 Depositions; procedures.**

* * * * *

(h) *Return.* The officer shall securely seal the deposition in an envelope endorsed with sufficient information to identify the proceeding and marked ''Deposition of (here insert name of witness)'' and shall either personally deliver or promptly send the original and one copy of all exhibits by e-filing (provided the filing complies with 49 CFR 1104.1(e)) or registered mail to the Office of Proceedings. A deposition to be offered in evidence must reach the Board not later than 5 days before the date it is to be so offered.

* * * * *

■ 11. Amend § 1114.31 by revising paragraphs (a) and (d) to read as follows:

**§ 1114.31 Failure to respond to discovery.**

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under § 1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to § 1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. Motions to compel may not be filed in cases under Final Offer Rate Review.

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology or simplified standards, the time for filing a reply to a motion to compel is governed by 49 CFR 1104.13.

(2) *Motions to compel in stand-alone cost and simplified standards rate cases.*

(i) Motions to compel in stand-alone cost, Simplified-SAC, and Three-Benchmark rate cases must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to answer discovery to obtain it without Board intervention.

(ii) In a rate case to be considered under the stand-alone cost, Simplified-SAC, or Three-Benchmark methodologies, a reply to a motion to compel must be filed with the Board within 10 days of when the motion to compel is filed.

(3) *Conference with parties on motion to compel.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Simplified-SAC, or Three-Benchmark, Board staff may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost, Simplified-SAC, and Three-Benchmark rate cases.* Within 5 business days after a conference with the parties convened pursuant to paragraph (a)(3) of this section, the Director of the Office of Proceedings will issue a summary ruling on the motion to compel discovery. If no conference is convened, the Director of the Office of Proceedings will issue this summary ruling within 10 days after the filing of the reply to the motion to compel. Appeals of a Director's ruling will proceed under 49 CFR 1115.9, and the Board will attempt to rule on such appeals within 20 days after the filing of the reply to the appeal.

* * * * *

(d) *Failure of party to attend or serve answers.* If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under § 1114.26, after proper service of

such interrogatories, the Board on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof. Such a motion may not be filed in a case under Final Offer Rate Review. In lieu of any such order or in addition thereto, the Board shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

* * * * *

## PART 1115—APPELLATE PROCEDURES

■ 12. The authority citation for part 1115 continues to read as follows:

**Authority:** 5 U.S.C. 559; 49 U.S.C. 1321; 49 U.S.C. 11708.

■ 13. Amend § 1115.3 by revising paragraph (e) to read as follows:

### § 1115.3 Board actions other than initial decisions.

* * * * *

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize. However, in cases under Final Offer Rate Review, petitions must be filed within 5 days after the service of the action, and replies to petitions must be filed within 10 days after the service of the action.

* * * * *

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

## Appendix

### Information Collection Under the Paperwork Reduction Act

*Title:* Complaints under 49 CFR 1111.

*OMB Control Number:* 2140–0029.

*STB Form Number:* None.

*Type of Review:* Revision of a currently approved collection.

*Summary:* As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the revision of the currently approved information collection, Complaints under 49 CFR part 1111, OMB Control No. 2140–0029, as further described below. The requested revision to the currently approved collection is necessitated by this Notice of Proposed Rulemaking (NPRM), which proposes to add an alternative (Final Offer Rate Review) complaint to the types of complaints collected by the Board in this information collection. All other information collected by the Board in the currently approved collection is without change from its approval.

*Respondents:* Affected shippers, railroads, and communities that seek redress for alleged violations related to unreasonable rates, unreasonable practices, service issues, and other statutory claims.

*Number of Respondents:* Eight.

*Frequency:* On occasion. In recent years, respondents have filed approximately four complaints per year with the Board. It is anticipated that four additional complaints would be filed annually under the proposed procedure. In *Market Dominance Streamlined Approach,* EP 756 (STB served September 12, 2019), the Board simultaneously issued a separate NPRM that also would impact the Board's existing collection of complaints. But that decision, which expects to add an additional five complaints a year (including the four complaints estimated to filed under Final Offer Rate Review), is being treated as separate and subsequent—for the purposes of estimation—to this NPRM's modification of the existing collection of complaints. The decision in EP 756 will include the modification here.

*Total Burden Hours* (annually including all respondents): 2,876 (sum of (i) estimated hours per complaint (469) × total number of estimated, existing complaints (4) and (ii) estimated hours per proposed alternative complaint (250) × total number of those complaints (4)).

*Total ''Non-Hour Burden'' Cost* (such as start-up costs and mailing costs): $8,968 (sum of (i) estimated non-hour burden cost per complaint ($1,462) × total number of estimated, existing complaints (4) and (ii) estimated non-hour burden cost per proposed alternative complaint ($780) × total number of those complaints (4)).

*Needs and Uses:* Under the Board's regulations, persons may file complaints before the Board pursuant to 49 CFR part 1111 seeking redress for alleged violations of provisions of the Interstate Commerce Act, Public Law 104–88, 109 Stat. 803 (1995). In the last few years, the most significant complaints filed at the Board allege that railroads are charging unreasonable rates or that they are engaging in unreasonable practices. *See, e.g.,* 49 U.S.C. 10701, 10704, and 11701. As described in more detail above in the NPRM, the Board is proposing to add a new procedure to provide stakeholders with a more streamlined option to challenge rate reasonableness for smaller cases. The collection by the Board of these complaints, and the agency's action in conducting proceedings and ruling on the complaints, enables the Board to meet its statutory duties.

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**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

### 49 CFR Parts 1011 and 1111

**[Docket No. EP 756]**

### Market Dominance Streamlined Approach

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Surface Transportation Board (STB or Board) proposes a streamlined approach for pleading market dominance in rate reasonableness proceedings. The Board expects that this streamlined approach would reduce burdens on parties, expedite proceedings, and make the Board's rate relief procedures more accessible, especially for complainants with smaller cases.

**DATES:** Comments are due by November 12, 2019; replies are due by January 10, 2020.

**ADDRESSES:** Comments and replies may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 756, 395 E Street SW, Washington, DC 20423–0001. Comments and replies will be posted on the Board's website at *www.stb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** In January 2018, the Board established its Rate Reform Task Force (RRTF), with the objectives of developing recommendations to reform and streamline the Board's rate review processes for large cases, and determining how to best provide a rate review process for smaller cases. After holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (RRTF Report).[1] Among other recommendations, the RRTF Report included a proposal that the Board develop ''a standard for pleading market dominance that will reduce the cost and time of bringing a rate case,'' stating that the market dominance inquiry for rate reasonableness cases was a ''costly and time-consuming undertaking.'' RRTF Report 52–53. Moreover, the RRTF concluded that an effort to streamline the market dominance inquiry was a necessary part of making rate relief available for smaller rate disputes. *Id.* at 52. Having considered the

[1] The RRTF Report was posted on the Board's website on April 29, 2019, and can be accessed at *https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf.*

recommendations included in the RRTF Report, and the broader market dominance issues discussed below, the Board is proposing a streamlined market dominance approach that would be available to complainants for rate cases under all of the Board's rate review methodologies.

**Background**

Determining the reasonableness of challenged rail transportation rates is one of the Board's core functions. *See* 49 U.S.C. 10101(6) (stating the rail transportation policy ''to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital''). In order to adjudicate the reasonableness of a rate, the Board must first find that the defendant rail carrier has market dominance over the transportation to which the rate applies. 49 U.S.C. 10701(d)(1), 10707(b), (c). Market dominance is defined as ''an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.'' 49 U.S.C. 10707(a).

The Board's market dominance inquiry comprises two components: A quantitative threshold and a qualitative analysis. The statute establishes a conclusive presumption that a railroad does not have market dominance if the rate charged produces revenues that are less than 180% of the variable costs [2] of providing the service. 49 U.S.C. 10707(d)(l)(A). However, a finding by the Board that a movement's R/VC ratio is 180% or greater does not establish a presumption that the rail carrier providing the transportation has market dominance over the movement. 49 U.S.C. 10707(d)(2)(A). Accordingly, if the quantitative 180% R/VC threshold is met, the Board moves to the second component, a qualitative analysis. In this analysis, the Board determines whether there are any feasible transportation alternatives sufficient to constrain the railroad's rates for the traffic to which the challenged rates apply (the issue traffic). *See, e.g., M&G Polymers 2012,* NOR 42123, slip op. at 2, 11–18; *Consumers Energy Co.* v. *CSX Transp., Inc.,* NOR 42142, slip op. at 287–98 (STB served Jan. 11, 2018).

The Board considers two types of competition in its qualitative market dominance analysis: [3]

- *Intramodal* (*i.e.,* whether the complainant can use other railroads to transport the same commodity between the same points); and
- *Intermodal* (*i.e.,* whether the complainant can use other transportation modes, such as trucks or barges, to transport the same commodity between the same points).

It is established Board precedent that the burden is on the complainant to demonstrate the lack of effective competition. *See, e.g., Total Petrochems. & Ref. USA, Inc.* v. *CSX Transp., Inc.* (*Total Petrochems. 2013*), NOR 42121, slip op. at 28 (STB served May 31, 2013) (with Board Member Begeman dissenting on other matters) (''In the qualitative market dominance inquiry, the complainant bears the burden of establishing the absence of effective competition from other rail carriers or modes of transportation for the traffic to which the challenged rate applies.''). The evidentiary process requires the complainant to prove a negative proposition on opening—that intermodal and intramodal competition are not effective constraints on rail rates. The Board then must determine what evidence is sufficient to make such a showing and how that evidence should be presented.[4]

The market dominance inquiry is a costly and time-consuming undertaking, resulting in a significant burden on rate case litigants.[5] Given the hypothetical nature of some competitive options proposed by defendant railroads in past cases, complainants essentially have to predict what a defendant railroad might argue regarding potential, but unused, competitive options—all without knowing precisely what constitutes a prima facie showing of an absence of effective competition. In the most recent rate reasonableness case, *Consumers Energy Co.* v. *CSX Transportation, Inc.,* Docket No. NOR 42142, the parties' market dominance presentations alone (throughout their filings) exceeded 200 pages of narrative discussion and included multiple expert reports. *See also Total Petrochems. & Ref. USA, Inc.* v. *CSX Transp., Inc.,* Docket No. NOR 42121 (including over 340 pages of narrative discussion on market dominance). In two cases where the market dominance inquiry was bifurcated from the rate reasonableness inquiry, the market dominance procedural schedules alone were three months long. *See M&G Polymers USA, LLC* v. *CSX Transp., Inc.,* NOR 42123, slip op. at 5 (STB served May 6, 2011); *Total Petrochems. & Ref. USA, Inc.* v. *CSX Transp., Inc.,* NOR 42121, slip op. at 7–8 (STB served Apr. 5, 2011).

In smaller rate cases, the expense associated with the market dominance inquiry may be particularly out of balance with the remedy being sought. For some complainants whose case may involve a limited number of carloads per year, the expense of the market dominance inquiry could make even the Board's least costly rate methodology, currently the Three-Benchmark methodology, cost-prohibitive. *See* RRTF Report 44 (noting carload shipper concerns ''that even a Three-Benchmark case under our current methodology (including, *e.g.,* a required showing of market dominance) is still too expensive and time-consuming''). Public comments in other Board proceedings state that current options for challenging the reasonableness of rates do not meet their need for expeditious resolution at a reasonable cost. *See, e.g.,* Alliance for Rail Competition Opening Comments 22, June 26, 2014, *Rail Transp. of Grain, Rate Regulation Review,* EP 665 (Sub-No. 1) (stating that the Three-Benchmark test is too costly and complex in its current form); Western Coal Traffic League Opening Comments 74–76, Oct. 23, 2012, *Rate Regulation Reforms,* EP 715 (stating that the cost and complexity of Simplified-SAC discourage its use). The RRTF concluded that streamlining the market dominance inquiry is a necessity to making rate relief available for smaller rate disputes and that a streamlined inquiry, available to complainants for rate cases under all of the Board's methodologies, could reduce the cost and time required to bringing a rate case while preserving a railroad's right to rebut market dominance arguments. RRTF Report 52–54. An overly complicated and costly market

[2] Variable costs are those railroad costs of providing service that vary with the level of output. *See M&G Polymers USA, LLC* v. *CSX Transp., Inc.* (*M&G Polymers 2012*), NOR 42123, slip op. at 2 n.4 (STB served Sept. 27, 2012). The comparison of revenues to variable costs, reflected as a percentage figure, is known as a revenue-to-variable cost (R/VC) ratio. *Id.*

[3] *M&G Polymers 2012,* NOR 42123, slip op. at 2.

[4] *See, e.g., Pet. of the Ass'n of Am. R.Rs. to Institute a Rulemaking Proceeding to Reintroduce Indirect Competition as a Factor Considered in Market Dominance Determinations for Coal Transported to Util. Generation Facilities,* EP 717 (STB served Mar. 19, 2013); *Gen. Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases,* 5 S.T.B. 441, 442–46 (2001).

[5] The Board's rate review methodologies generally have proven to be costly and time-consuming. Further, the Board has recognized that, for smaller disputes, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case. *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2), slip op. at 10 (STB served Aug. 31, 2016). In a decision issued concurrently with this one, the Board is proposing an alternative rate review procedure for challenging the reasonableness of rates in smaller cases. *See Final Offer Rate Review,* EP 755 et al. (STB served September 12, 2019).

dominance inquiry can *itself* be a barrier to rate relief, even in cases where there is no effective competitive restraint on rail rates. A less complex market dominance inquiry that still provides ample opportunity for both parties to present evidence would help ensure both that the burden of the process will not dissuade complainants with meritorious cases from bringing those cases to the Board, and that rate cases are processed more expeditiously. The agency's predecessor, the Interstate Commerce Commission, noted the Congressional intent expressed in the market dominance statute and in the legislative history, stating that Congress ''envisioned the market dominance determination simply as a practical threshold jurisdictional determination to be made without lengthy litigation or administrative delay.'' *Westmoreland Coal Sales Co.* v. *Denver & Rio Grande W. R.R.,* 5 I.C.C.2d 751, 754 (1989) (discussing 49 U.S.C. 10709, the predecessor of the current section 10707).

Having considered the RRTF's recommendation, the Board proposes a streamlined market dominance approach to further the rail transportation policy, which requires that the Board regulate in such a way to provide for the expeditious handling and resolution of all proceedings, 49 U.S.C. 10101(15), foster sound economic conditions in transportation and ensure effective competition, section 10101(5), and maintain reasonable rates where there is an absence of effective competition, section 10101(6). The streamlined market dominance approach would expedite the handling of rate cases and make rate relief procedures more accessible to those complainants that find the current processes cost prohibitive. A streamlined approach to market dominance would also be consistent with the policy of allowing, to the maximum extent possible, competition and the demand for services to establish reasonable transportation rates, section 10101(1). Under the proposed streamlined approach described below, complainants would still be required to demonstrate, with sufficient evidence, the absence of effective competition.[6]

Streamlining the market dominance inquiry would also be consistent with clear Congressional directives not only in the rail transportation policy but also in the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Public Law 114–110, 129 Stat. 2228. Section 11 of the STB Reauthorization Act modified 49 U.S.C. 10704(d) to require that the Board ''maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates.'' [7] Section 11 also shortened the time for deciding rate cases brought under the Stand-Alone Cost (SAC) methodology. In addition, appropriate Board-imposed measures to avoid delay in the discovery and evidentiary phases of rate proceedings, especially on a threshold issue like market dominance, fulfill those Congressional directives. *See, e.g.,* 49 U.S.C. 10704(d)(1).

It is well established that the Board has the authority to review and modify its rate reasonableness methodologies and processes—including its market dominance inquiry—to ensure that they remain accessible to the complainants that are entitled to use them.[8] For example, in *Market Dominance Determinations—Product & Geographic Competition* (*Product & Geographic Competition 1998*), 3 S.T.B. 937, 938 (1998), the Board examined whether product and geographic competition should be considered in market dominance inquiries. The Board concluded that ''it appears that the burdens associated with litigating product and geographic competition issues may serve to deny captive shippers with valid claims access to the Board and thus their only avenue of rate relief.'' [9] In a subsequent decision, following remand from the U.S. Court of Appeals for the District of Columbia Circuit for consideration of the rail transportation policy, the Board reaffirmed its elimination of product and geographic competition from consideration, stating that ''Congress has directed us to apply the market dominance provision in a practical manner.'' *Product & Geographic Competition 2001,* EP 627, slip op. at 2. The Board stated that ''the complications and delays resulting from consideration of product and geographic competition are contrary to the Congressional directive that the administrative market dominance procedures be easily administrable.'' *Id.* at 8 (citing *Ass'n of Am. R.Rs.,* 237 F.3d at 680; Rail Revitalization & Regulatory Reform Act of 1976, Public Law 94–210 section 202(d), 90 Stat. 31). Most significantly, the Board found that elimination of product and geographic competition from consideration advanced the equally important goal of expediting rate cases. *Id.* (citing 49 U.S.C. 10101(2), (15)).

In affirming the Board's 2001 decision, the D.C. Circuit noted that it is up to the Board to arrive at a reasonable accommodation of the conflicting policies set out in the Staggers Rail Act of 1980, and that Congress had expressly required the Board to provide for the expeditious handling and resolution of all proceedings. *Ass'n of Am. R.Rs.,* 306 F.3d at 1111. The court found that the Board's construction of the statute furthered its statutory mandate ''to establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates, including 'appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings.' '' *Id.* (emphasis omitted) (citing 49 U.S.C. 10704(d)(1)).

In a similar vein, the D.C. Circuit affirmed the Board's decision in *Major Issues in Rail Rate Cases,* EP 657 (Sub-No. 1), slip op. at 60 (STB served Oct. 30, 2006), to eliminate ''movement-specific adjustments'' to the uniform method for determining the variable costs in the quantitative market dominance inquiry. *BNSF Ry.* v. *STB,* 526 F.3d 770, 776–77 (D.C. Cir. 2008). Prior to the decision in *Major Issues,* parties to rate cases were permitted to make movement-specific adjustments to the Board's standard variable cost calculations generated by the Uniform Railroad Costing System (URCS). In *Major Issues,* the Board eliminated the use of those movement-specific adjustments in market dominance presentations, finding that they made proceedings ''inordinately complex, time consuming, and expensive, and [did] not necessarily result in more reliable results.'' *Major Issues,* EP 657 (Sub-No. 1), slip op. at 60. In affirming the Board's decision, the D.C. Circuit found that the elimination of movement-specific adjustments ''balances inherently incommensurable cost and benefits,'' and is a decision that

[6] Because the market dominance inquiry is a threshold determination, even in cases where a complainant demonstrates the absence of effective competition, the Board, after considering evidence from the parties, may find a challenged rate to be reasonable.

[7] Prior to the enactment of the STB Reauthorization Act, section 10704(d) began with a sentence stating that, ''[w]ithin 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates.''

[8] *See, e.g., Rate Regulation Reforms,* EP 715, slip op. at 1–2 (STB served Mar. 13, 2015); *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

[9] *Product & Geographic Competition 1998,* 3 S.T.B. at 949, *remanded sub nom. Ass'n of Am. R.Rs.* v. *STB,* 237 F.3d 676 (D.C. Cir. 2001), *reaff'd on remand,* 5 S.T.B. 492 (2001), *corrected,* EP 627 (STB served Apr. 6, 2001) (*Product & Geographic Competition 2001*), *aff'd sub nom. Ass'n of Am. R.Rs.* v. *STB,* 306 F.3d 1108 (D.C. Cir. 2002).

''falls within the expertise of the agency.'' *BNSF Ry.,* 526 F.3d at 776.

The expeditious treatment of market dominance issues is essential to the Board's ability to consider rate reasonableness cases where there is an absence of effective competition. In order to meet its statutory duty to ensure the expeditious handling of challenges to the reasonableness of railroad rates, it is important for the Board to consider ways to streamline the presentation of market dominance evidence, particularly in smaller cases where the cost of making a market dominance presentation can outweigh the value of the case.

**Proposed Rule**

To reduce the burden on the parties, the Board proposes to establish that a complainant has made a prima facie showing of market dominance when it can demonstrate the following:

- The movement has an R/VC ratio of 180% or greater;
- The movement would exceed 500 highway miles between origin and destination;
- There is no intramodal competition from other railroads;
- There is no barge competition;
- The complainant has used truck for 10% or fewer of its movements subject to the rate at issue over a five-year period; and
- The complainant has no practical build-out alternative due to physical, regulatory, financial, or other issues (or combination of issues).

As discussed below, these proposed prima facie factors are relevant to the Board's consideration of the existence (or lack) of effective competition for a rail movement and would be sufficient to make a prima facie showing of market dominance. If a complainant could demonstrate each of the factors listed above, the Board would have significant evidence about the status of effective competition, without requiring a more complicated evidentiary showing by the complainant or the railroad. Complainants that cannot make a showing under the six factors—and therefore choose not to attempt a streamlined market dominance showing in the first place—would be required at the outset to establish market dominance in a non-streamlined market dominance presentation by introducing additional detailed evidence regarding effective competition. In either scenario, defendant railroads would continue to have the opportunity to rebut the complainant's evidence or argue against a finding of market dominance based on other factors.

**Proposed Prima Facie Factors**

*R/VC of 180% or Greater.* As discussed earlier, this is a statutory requirement for quantitative market dominance and must be established, even under a streamlined approach. This is not often a contentious issue in rate cases and is often established by stipulation. The revenue figure is taken from the tariff rate plus applicable fuel surcharge and escalation clauses. The URCS Phase III movement costing program, which is available for download on the Board's website, calculates the variable costs of a particular movement based on user-supplied information. Calculating variable costs using the URCS Phase III program is a quick and simple process. In demonstrating the R/VC ratio, a complainant must show its quantitative calculations.

*Movement Length Greater than 500 Highway Miles.* The Board proposes a 500-highway-mile threshold as a factor to identify when trucking is not likely to provide effective competition. The Board has previously indicated that ''[t]rucking becomes less viable when the length of haul exceeds 500 miles because any transport over that threshold, in many instances, could not be completed in one day.'' *Review of Commodity, Boxcar, & TOFC/COFC Exemptions,* EP 704 (Sub-No. 1), slip op. at 7 n.12 (STB served Mar. 23, 2016).[10] Given the reduced likelihood of effective truck competition for movements exceeding 500 highway miles, rail movements that meet this criterion are more likely to be served by market dominant carriers. If a complainant can establish this prima facie factor, it would assist the Board in making a market dominance determination more expeditiously.

The Board recognizes that the 500-highway-mile threshold may be underinclusive for certain commodities that are more difficult to move by truck (*e.g.,* particularly heavy commodities). Further, the Board has received public comment that ''trucking generally becomes cost-competitive to rail only for agricultural movements of 200 miles or less.'' National Grain & Feed Assoc. Opening Comments 11, Nov. 14, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2). Accordingly, the Board specifically seeks comment on whether, and if so how, the mileage threshold could be varied by commodity group(s). The Board invites public commenters to include detailed quantitative and qualitative information in support of any alternative mileage threshold.

The Board also recognizes that movements in excess of the proposed 500-highway-mile threshold could still have effective competitive transportation alternatives. *See* CSX Transportation, Inc. Opening Comments 7, Nov. 14, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2) (noting instances where the Board has found market dominance for movements over 500 miles). Under the Board's proposal, a defendant railroad would have the opportunity in its reply evidence to argue that despite the 500-highway-mile threshold, the carrier is not market dominant for the movement.

*Absence of Intramodal Competition.* Because the Board must consider whether other railroads provide effective competition regarding a challenged rate, the absence of intramodal competition is an important factor that could streamline the Board's analysis. While the existence of intramodal competition is not often litigated, there are exceptions. *See, e.g., Total Petrochems. 2013,* NOR 42121, slip op. at 50–51 (addressing railroad's arguments that shipper had a direct rail option for one of the lanes at issue). If a complainant can demonstrate the complete absence of such competition, it would assist the Board in making a market dominance determination more expeditiously. The Board expects that, in most cases, the complainant would demonstrate the absence of intramodal competition by submitting a verified statement from an appropriate official attesting that the complainant does not have practical physical access to another railroad. Practical physical access encompasses feasible shipping alternatives on another railroad, including switching arrangements, where ''an alternative is possible from a practical standpoint given real-world constraints.'' *Total Petrochems. 2013,* NOR 42121, slip op. at 4 n.9.

*Absence of Barge Competition.* The existence of barge competition, like truck competition, can be an issue in cases where a complainant's or receiver's facility is located on a navigable waterway. *See, e.g., Consumers Energy Co.* v. *CSX Transp., Inc.,* NOR 42142, slip op. at 287 (STB served Jan. 11, 2018). Accordingly, if a complainant can demonstrate the absence of such competition (*e.g.,*

[10] *See also Rail Gen. Exemption Auth.—Exemption of Grease or Inedible Tallow,* 10 I.C.C.2d 453, 461 (1994) (finding that movements over 500 miles ''were thus less likely to be the subject of direct truck competition''). Additionally, the Board sought comment on using 500 highway miles between origin and destination as a preliminary screen as part of a potential rate review methodology. *Rail Transp. of Grain, Rate Regulation Review,* EP 665 (Sub-No. 1) et al., slip op. at 16 (STB served Aug. 31, 2016) (responsive comments docketed in Docket No. EP 665 (Sub-No. 2)).

because the complainant or receiver, or both, is landlocked), it would assist the Board in making a determination more expeditiously as to whether barge competition constrains market power. The Board expects that, in most cases, the complainant would demonstrate the absence of barge competition by submitting a verified statement from an appropriate official attesting that the complainant does not have practical physical access to barge competition.

*No More Than 10% of Recent Movements by Truck.* Board precedent makes clear that traffic that regularly and routinely moves by truck or truck-rail transloading is less likely to be served by a market dominant rail carrier. *See, e.g., E.I. DuPont de Nemours & Co.* v. *Norfolk S. Ry.* (*E.I. DuPont*), NOR 42125, slip op. at 307–08 (STB served Mar. 24, 2014), *corrected and updated* (STB served Oct. 3, 2014); *M&G Polymers 2012,* NOR 42123, slip op. at 48. However, market dominance can still be found in cases where truck competition exists if the truck competition is found not to be a constraint on the defendant railroad's rates. *See, e.g., Total Petrochems. & Ref. USA, Inc.* v. *CSX Transp., Inc.,* NOR 42121, slip op. at 9 (STB served Dec. 19, 2013) (''But the fact that some [truck] competition exists, or that the price of the alternative happens to be similar to the challenged rate, does not in itself demonstrate that such competition is effectively constraining a carrier's pricing—*i.e.,* whether the competitive alternative is sufficient to deter the carrier from charging monopoly prices for the transportation at issue.''). Cases that require a review of the comparative pricing between truck and rail raise many complicated issues that do not appear to be suitable for a streamlined market dominance approach. But most cases that raise no such issues, because truck competition is simply not a factor providing effective competition, would benefit from a streamlined approach, and it would assist the Board in making a market dominance determination more expeditiously.

Accordingly, the Board proposes that a showing that truck movements for the issue traffic are minimal would establish this factor. *See, e.g., E.I. DuPont,* NOR 42125, slip op. at 323 n.1709 (noting that ''there are a variety of reasons unrelated to transportation economics that [a shipper] might use certain alternatives (*e.g.,* to serve customers without rail access, to accommodate low volume purchasers, or to expedite emergency shipments)''). As might be expected in a case-by-case fact-specific inquiry, the agency has accepted varying percentages of truck movements as proof of effective competition. *Compare Amstar Corp.* v. *Atchison, Topeka & Santa Fe Ry.,* NOR 37478, slip op. at 7 (ICC served Dec. 8, 1987) (finding that effective competition existed even where complainants had shipped 98.5% of the issue movements by rail), *with McCarty Farms* v. *Burlington N. Inc.,* 3 I.C.C.2d 822, 829–33 (1987) (finding no effective competition existed despite a trucking alternative accounting for 20%-25% of the movements). Given today's transportation market, including the state of truck competition, and the Board's experience with market dominance determinations in recent rate cases, the Board proposes that a complainant that shows that it has used trucking for 10% or fewer of its movements subject to the rate at issue over a five-year period will have made a prima facie showing for this factor concerning the absence of effective truck competition. Although the agency has found an absence of market dominance in cases where less than 10% of the issue traffic has moved by truck, the Board proposes that a 10% level is an appropriate threshold for a complainant to demonstrate that its truck options are ineffective, based on its limited use of the option over a historical period. Unlike complainants that regularly move large volumes of traffic by truck, complainants that move less than 10% of their traffic by truck, despite rates with high R/VC ratios and the absence of intramodal and barge competition, are reasonably likely to have persuasive arguments for why trucking does not provide effective competition, including customer contracts, product characteristics, and price of the trucking alternative. *See, e.g., M&G Polymers 2012,* NOR 42123, slip op. at 19–21, 24–34 (addressing, among other things, customer requirements and product integrity issues in the context of a market dominance analysis). Such a showing would assist the Board in making a market dominance determination more expeditiously.

The Board recognizes that it has found market dominance in cases where complainants utilize trucks for more than 10% of their movements. Accordingly, the Board specifically seeks comment on whether, and if so, how the truck movement percentage threshold should be implemented. The Board invites public commenters to include detailed quantitative and qualitative information in support of any alternative truck movement percentage threshold. As with the 500-highway-mile threshold, and all the other factors as well, a defendant railroad would have the opportunity in its reply evidence to argue that despite the 10% threshold, the carrier is not market dominant for the movement. The Board proposes that five years [11] is an appropriate lookback period for truck movement data because it is recent enough to reflect a complainant's current business operations and long enough to capture a snapshot of its historical use of trucks.

*No Practical Build-out Option.* The term ''build-out'' has been used by the agency to refer to possible competitive alternatives that could be accessed if the complainant makes certain infrastructure investments. The Board proposes that one factor of a prima facie showing of market dominance under the streamlined approach would be that a complainant demonstrate, by a short plain statement in a verified statement from an appropriate official or other means, that it has no practical build-out option due to physical, regulatory, financial, or other issues (or combination of issues).[12] The streamlined market dominance option would not be available when build-out alternatives are practical, although such a complainant could still attempt to show in a non-streamlined market dominance presentation that the build-out does not provide effective competition. In cases where there is no practical build-out option, it would assist the Board in making a market dominance determination more expeditiously.

Railroad arguments that potential build-outs are available—although not typically found by the Board to be practical alternatives [13]—can significantly complicate market dominance presentations. A complainant may not have information

[11] Complainants with new traffic that does not go back a full five years would be permitted to submit the available months or years of data for the movement.

[12] Physical issues include geographic constraints, such as the inability to obtain a right-of-way to the connecting carrier. Regulatory issues include legal barriers, such as prohibitive environmental permitting processes. Financial issues include a determination that the expense of the build-out would not be cost effective in light of the potential transportation rate savings.

[13] *See, e.g., Consumers Energy Co.* v. *CSX Transp., Inc.,* NOR 42142, slip op. at 295–96 (STB served Jan. 11, 2018) (finding an alternative which would require building additional rail infrastructure to be not feasible); *Tex. Mun. Power Agency* v. *Burlington N. & Santa Fe Ry.,* 6 S.T.B. 573, 584 (2003) (finding that constructing a 13.5-mile spur track to reach a competing railroad that would cost at least $49 million was not feasible); *W. Tex. Utils. Co.* v. *Burlington N. R.R.,* 1 S.T.B. 638, 651 (1996), *aff'd sub nom. Burlington N. R.R.* v. *STB,* 114 F.3d 206 (D.C. Cir. 1997) (finding two potential rail line build-out alternatives costing $62 million and $79 million to not be realistic).

to address build-out options unless it has studied those options. But a defendant railroad might be able to identify hypothetical potential competitive options for the complainant's traffic. This possibility likely leaves some complainants unsure as to how much information to affirmatively include in their opening presentation about potential competitive options that a railroad *might* identify. Such uncertainty could significantly increase litigation costs and dissuade complainants from bringing cases to the Board.

Therefore, the Board proposes a factor that would limit the evidentiary burden and simplify the requirement for complainants while also ensuring that the Board obtains information about build-out alternatives that may be relevant to the competitive landscape. To demonstrate this factor of a market dominance prima facie showing, a complainant would need to submit a short plain statement in a verified statement by an appropriate official, or otherwise demonstrate, that it has no practical build-out alternative. For example, the complainant must state whether the impracticality is due to physical, regulatory, financial, or other issues (or combination of issues). If that showing cannot be made, the complainant would be required at the outset to address in some detail in its opening, through the non-streamlined market dominance presentation, why any potential build-out(s) would not provide effective competition.

**Mechanics**

Many of the facts to support these proposed prima facie factors are available to complainants at the pleading stage. Accordingly, the Board expects that complainants would be able to plead these factors in most cases and potentially negotiate stipulations with defendant carriers that would avoid costly discovery. Further, as discussed above, with respect to some of the factors, a verified statement from an appropriate official(s) with knowledge of the facts would be sufficient to meet the complainant's prima facie showing. By establishing the list of factors set out above, the Board would find by rule that a complainant that meets each of the required factors will have made a prima facie showing of market dominance. If a complainant determines that it is not able to demonstrate one of the required factors, it would not choose this streamlined approach at the beginning of the case, but would instead need to choose a non-streamlined market dominance presentation with additional detailed information about its transportation options. If a complainant elects to use the streamlined market dominance approach and the Board finds that market dominance has not been shown, the complainant may not submit a new rate case involving the same traffic using the non-streamlined market dominance presentation unless there are changed circumstances (or other factors under 49 U.S.C. 1322(c)). For purposes of this streamlined approach, the disclosures required under 49 CFR 1111.2(a) and (b) [14] would apply to a complainant electing to use this streamlined approach.

The Board's proposed streamlined market dominance approach would not result in a shifting of the burden for market dominance. The burden for establishing market dominance remains on the complainant, as it does with other issues in rate reasonableness cases. But the proposed approach would allow a complainant that can demonstrate the factors to make a prima facie showing that it has met its ''burden of establishing the absence of effective competition from other rail carriers or modes of transportation for the traffic to which the challenged rate applies.'' *Total Petrochems. 2013,* NOR 42121, slip op. at 28.

As stated above, this streamlined approach would not deprive railroads of their opportunity to defend themselves by rebutting a complainant's prima facie showing. Carriers would be permitted to refute any of the prima facie factors of the complainant's case, or otherwise show that effective competition exists for the traffic at issue. As in a non-streamlined market dominance presentation, a complainant under this new approach would have the opportunity to respond to the railroad's reply evidence in its rebuttal submission (or in the case of a matter brought under the Final Offer Rate Review procedure in the optional hearing described below). The new approach described in this decision should help narrow the focus of arguments on reply and rebuttal. Accordingly, the Board would impose a 50-page limit, inclusive of exhibits and verified statements, on each of the parties' reply and rebuttal submissions on market dominance in proceedings where the complainant uses the streamlined approach.[15] ''The Board believes the page limit will encourage parties to focus their [arguments] on the most important issues.'' *Expediting Rate Cases,* EP 733, slip op. at 12 (STB served Nov. 30, 2017).

To help facilitate building the record on market dominance under the streamlined approach, the Board proposes a new delegation of authority under 49 CFR 1011.6 to an Administrative Law Judge (ALJ) to hold an on-the-record telephonic market dominance evidentiary hearing, at the complainant's option, within seven days after the due date of complainant's rebuttal (or in the case of a matter brought under the Final Offer Rate Review procedure within seven days after the due date of the parties' reply). The ALJ's role would be to allow the parties to clarify their market dominance positions under oath, and to build upon issues presented by the parties through critical and exacting questioning. Given this hearing, the complainant may elect whether to file rebuttal evidence on market dominance issues (in cases that provide for rebuttal, *i.e.* cases not brought under the Final Offer Rate Review procedure) or to rely on the ALJ hearing to rebut the defendant's reply evidence. Within four days of the evidentiary hearing, a transcript of the hearing would be entered into the docket. The Board would take the entire record into consideration, including the transcript from the ALJ hearing, when reaching its final conclusion on market dominance. The Board's determinations would occur in accordance with the deadlines set out in 49 CFR 1111.9 and 1111.10, and, if adopted, the new deadlines proposed in *Final Offer Rate Review,* Docket No. EP 755 et al.

The Board concludes that the proposed approach would have the benefit of reducing the complexity of market dominance presentations for many complainants without limiting railroads' ability to mount a thorough defense. The Board finds that the availability of a streamlined market dominance approach would reduce unneeded burdens that could dissuade complainants from bringing cases. Moreover, reducing the time and expense associated with litigating market dominance is particularly

[14] Under the Board's existing regulations, section 1111.2(a) requires that, with any rate complaint submitted under simplified standards, a complainant must submit, inter alia, the URCS Phase III inputs. Likewise, section 1111.2(b) requires such a complainant to ''provide to the defendant all documents relied upon in formulating its assessment of a feasible transportation alternative and all documents relied upon to determine the inputs to the URCS Phase III program.''

[15] The Board has found that a 50-page limit is an appropriate threshold to provide the parties with an adequate opportunity to address complex issues in rate cases, including petitions for reconsideration and briefs. *E.I. DuPont de Nemours & Co.* v. *Norfolk S. Ry.,* NOR 42125, slip op. at 2 (STB served June 11, 2014); *Sunbelt Chlor Alkali Partnership* v. *Norfolk S. Ry.,* NOR 42130, slip op. at 2 (STB served July 25, 2014).

important for smaller rate disputes. The proposed rule would also help the Board achieve the statutory requirement to ensure the expeditious handling of challenges to the reasonableness of railroad rates, 49 U.S.C. 10704(d)(1), and further the rail transportation policies of providing for the expeditious handling and resolution of all proceedings, section 10101(15), fostering sound economic conditions in transportation and ensuring effective competition, section 10101(5), and maintaining reasonable rates where there is an absence of effective competition, section 10101(6). Accordingly, the Board invites comment on the proposed streamlined market dominance approach.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

This proposal would not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA.[16] The proposal imposes no additional record-keeping by small railroads or any reporting of additional information. Nor do these proposed rules circumscribe or mandate any conduct by small railroads that is not already required by statute: The establishment of reasonable transportation rates when a carrier is found to be market dominant. Small railroads have always been subject to rate reasonableness complaints and their associated litigation costs, including addressing whether they have market dominance over traffic. Finally, as the Board has previously concluded, the majority of railroads involved in these rate proceedings are not small entities within the meaning of the Regulatory Flexibility Act. *Simplified Standards,* EP 646 (Sub-No. 1), slip op. at 33–34. Furthermore, since the inception of the Board in 1996, only three of the 51 cases filed challenging the reasonableness of freight rail rates have involved a Class III rail carrier as a defendant. Those three cases involved a total of 13 Class III rail carriers. The Board estimates that there are approximately 656 Class III rail carriers. Therefore, the Board certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

This decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

**Paperwork Reduction Act**

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), and in the Appendix, the Board seeks comments about the impact of the revisions in the proposed rule to the currently approved collection of Complaints (OMB Control No. 2140–0029) regarding: (1) Whether the collection of information, as modified in the proposed rule and further described below, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate.

The proposed simplified market dominance approach is intended to provide a less burdensome alternative to a non-streamlined market dominance presentation and is estimated, on balance, to result in five additional complaints filed each year. Filing a complaint has been estimated to require an annual hour burden of 469 hours and an annual ''non-hour burden'' cost of $1,462. *See* Supporting Statement for Modification & OMB Approval Under the Paperwork Reduction Act & 5 CFR pt. 1320, OMB Control No. 2140–0029 (Jan. 2018), available at *https://www.reginfo.gov/public/do/DownloadDocument?objectID=78860402.* For the reasons discussed above, filing a complaint with the streamlined market dominance approach is likely to require less time and expenditure than other complaints. Accordingly, the Board estimates that this new proposed method would entail an annual hour burden of 250 hours per complaint and an annual ''non-hour burden'' cost of $780 per complaint. These additional complaints are estimated to add a total annual hour burden of 1,250 hours and $3,900 of total annual ''non-hour burden'' cost under the PRA. The Board welcomes comment on the estimates of actual time and costs of complaints, as detailed below in the Appendix. Other information pertinent to complaints, including the simplified market dominance presentations, is also included in the Appendix. The proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11. Comments received by the Board regarding the information collection will also be forwarded to OMB for its review when the final rule is published.

**Administrative Practice and Procedure; Investigations**

*It is ordered:*

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. Comments regarding the proposed rules are due by November 12, 2019. Replies are due by January 10, 2020.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

4. This decision is effective on its service date.

[16] For the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars or $39,194,876 or less when adjusted for inflation using 2018 data. Class II rail carriers have annual operating revenues of less than $250 million or $489,935,956 when adjusted for inflation using 2018 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds in decisions and on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served June 14, 2019).

**List of Subjects**

*49 CFR part 1011*

Administrative practice and procedure; Authority delegations (government agencies); Organization and functions (government agencies).

*49 CFR part 1111*

Administrative practice and procedure; Investigations.

Decided: September 11, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

**Jeffrey Herzig,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1011 and 1111 of title 49, chapter X, of the Code of Federal Regulations as follows:

## PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 1011 continues to read as follows:

**Authority:** 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 1301, 1321, 11123, 11124, 11144, 14122, and 15722.

■ 2. Amend § 1011.6 by adding paragraph (i) to read as follows:

**§ 1011.6 Delegations of authority by the Chairman.**

* * * * *

(i) In matters involving the streamlined market dominance approach, authority to hold a telephonic evidentiary hearing on market dominance issues is delegated to administrative law judges, as described in § 1111.12(e) of this chapter.

## PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 3. The authority citation for part 1111 is revised to read as follows:

**Authority:** 49 U.S.C. 10701, 10702, 10704, 10707, 11701, and 1321.

■ 4. Amend § 1111.2 by revising the last sentence of paragraph (a) introductory text and paragraph (b) to read as follows:

**§ 1111.2 Content of formal complaints; joinder.**

(a) * * * If the complainant seeks to use the simplified standards or the streamlined market dominance approach, it should support this request by submitting, at a minimum, the following information:

* * * * *

(b) *Disclosure required with complaints in simplified standards cases and in cases using the streamlined market dominance approach.* The complainant must provide to the defendant all documents relied upon in formulating its assessment of a feasible transportation alternative and all documents relied upon to determine the inputs to the URCS Phase III program.

* * * * *

■ 5. Amend § 1111.9 by revising paragraph (a) to read as follows:

**§ 1111.9 Procedural schedule in stand-alone cost cases.**

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedule will apply in stand-alone cost cases after the pre-complaint period initiated by the pre-filing notice:

(1) Day 0—Complaint filed, discovery period begins.

(2) Day 7 or before—Conference of the parties convened pursuant to § 1111.11(b).

(3) Day 20—Defendant's answer to complaint due.

(4) Day 150—Discovery completed.

(5) Day 210—Complainant files opening evidence on absence of intermodal and intramodal competition, variable cost, and stand-alone cost issues.

(6) Day 270—Defendant files reply evidence to complainant's opening evidence.

(7) Day 305—Complainant files rebuttal evidence to defendant's reply evidence.

(8) Day 312—In cases using the streamlined market dominance approach, a telephonic evidentiary hearing before an administrative law judge, as described in § 1111.12(e), will be held at the discretion of the complainant within 7 days after the complainant's rebuttal evidence on market dominance issues is due.

(9) Day 335—Complainant and defendant file final briefs.

(10) Day 485 or before—The Board issues its decision.

* * * * *

■ 6. Amend § 1111.10 by revising paragraph (a) to read as follows:

**§ 1111.10 Procedural schedule in cases using simplified standards.**

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedules will apply in cases using the simplified standards:

(1)(i) In cases relying upon the Simplified-SAC methodology:

(A) Day 0—Complaint filed (including complainant's disclosure).

(B) Day 10—Mediation begins.

(C) Day 20—Defendant's answer to complaint (including defendant's initial disclosure).

(D) Day 30—Mediation ends; discovery begins.

(E) Day 140—Defendant's second disclosure.

(F) Day 150—Discovery closes.

(G) Day 220—Opening evidence.

(H) Day 280—Reply evidence.

(I) Day 310—Rebuttal evidence.

(J) Day 317—In cases using the streamlined market dominance approach, a telephonic evidentiary hearing before an administrative law judge, as described in § 1111.12(e), will be held at the discretion of the complainant within 7 days after the complainant's rebuttal evidence is due.

(K) Day 320—Technical conference (market dominance and merits, except for cases using the streamlined market dominance approach, in which the technical conference will be limited to merits issues).

(L) Day 330—Final briefs.

(ii) In addition, the Board will appoint a liaison within 10 business days of the filing of the complaint.

(2)(i) In cases relying upon the Three-Benchmark methodology:

(A) Day 0—Complaint filed (including complainant's disclosure).

(B) Day 10—Mediation begins. (STB production of unmasked Waybill Sample.)

(C) Day 20—Defendant's answer to complaint (including defendant's initial disclosure).

(D) Day 30—Mediation ends; discovery begins.

(E) Day 60—Discovery closes.

(F) Day 90—Complainant's opening (initial tender of comparison group and opening evidence on market dominance). Defendant's opening (initial tender of comparison group).

(G) Day 95—Technical conference on comparison group.

(H) Day 120—Parties' final tenders on comparison group. Defendant's reply on market dominance.

(I) Day 150—Parties' replies to final tenders. Complainant's rebuttal on market dominance.

(J) Day 157—In cases using the streamlined market dominance approach, a telephonic evidentiary hearing before an administrative law judge, as described in § 1111.12(e), will be held at the discretion of the complainant within 7 days after the complainant's rebuttal evidence is due.

(ii) In addition, the Board will appoint a liaison within 10 business days of the filing of the complaint.

* * * * *

■ 7. Add section § 1111.12 to read as follows:

**§ 1111.12 Streamlined Market Dominance.**

(a) A complainant may elect to pursue the streamlined market dominance

approach to market dominance if the challenged movement satisfies the factors listed in paragraphs (a)(1) through (a)(6) of this section. The Board will find a complainant has made a prima facie showing on market dominance when it can demonstrate the following with regard to the traffic subject to the challenged rate:

(1) The movement has an R/VC ratio of 180% or greater;

(2) The movement would exceed 500 highway miles between origin and destination;

(3) There is no intramodal competition from other railroads;

(4) There is no barge competition;

(5) The complainant has used truck for 10% or fewer of its movements subject to the rate at issue over a five-year period; and

(6) The complainant has no practical build-out alternative due to physical, regulatory, financial, or other issues (or combination of issues).

(b) A complainant may rely on any competent evidence, including a verified statement from an appropriate official(s) with knowledge of the facts, in demonstrating the factors set out in paragraph (a) of this section. In demonstrating the revenue to variable cost ratio, a complainant must show its quantitative calculations.

(c) When a complainant elects to utilize the streamlined market dominance approach, it must provide the initial disclosures found in § 1111.2 (a) and (b), regardless of the rate reasonableness methodology selected (including stand-alone cost cases).

(d) A defendant's reply evidence under the streamlined market dominance approach may address the factors in paragraph (a) of this section and any other issues relevant to market dominance. A complainant may elect to submit rebuttal evidence on market dominance issues (in cases that provide for rebuttal, *i.e.* cases not brought under the Final Offer Rate Review procedure). Reply and rebuttal filings under the streamlined market dominance approach are each limited to 50 pages, inclusive of exhibits and verified statements.

(e) Pursuant to the authority under § 1011.6 of this chapter, an administrative law judge will hold a telephonic evidentiary hearing on the market dominance issues at the discretion of the complainant within 7 days after the complainant's rebuttal evidence is due. In Final Offer Rate Review matters, the hearing will be held within 7 days after the parties' replies are due. The Board will arrange to receive the hearing transcript within 4 days of when the evidentiary hearing is held. The oral hearing transcript will be part of the docket in the proceeding. Market dominance determinations will be made by the Board.

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

*Title:* Complaints under 49 CFR part 1111.

*OMB Control Number:* 2140–0029.

*STB Form Number:* None.

*Type of Review:* Revision of a currently approved collection.

*Summary:* As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521, the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the revision of the currently approved information collection, Complaints under 49 CFR part 1111, OMB Control No. 2140–0029, as further described below. The requested revision to the currently approved collection is necessitated by this Notice of Proposed Rulemaking (NPRM), which is expected to increase the number of complaints filed with the Board because of the addition of the proposed streamlined market dominance approach. All other information collected by the Board in the currently approved collection is without change from its approval.

*Respondents:* Affected shippers, railroads, and communities that seek redress for alleged violations related to unreasonable rates, unreasonable practices, service issues, and other statutory claims.

*Number of Respondents:* Nine.

*Frequency:* On occasion. In recent years, respondents have filed approximately four complaints per year with the Board. In *Final Offer Rate Review,* EP 755 et al. (STB served September 12, 2019), the Board simultaneously issued a separate NPRM that also impacts the Board's existing collection of complaints. In that decision, the Board estimates that the proposed alternative (Final Offer Rate Review) complaint would result in the collection of approximately four additional complaints annually. The modification of the Board's existing collection for those additional complaints is noticed in Docket No. EP 755 et al. and incorporated in the burdens below. In this NPRM, based on the addition of the simplified market dominance approach, the Board anticipates that approximately five additional complaints would be filed annually, including those from Docket No. EP 755 et al. Combining the existing complaints and the additional complaints resulting from the proposed rules in Docket No. EP 755 et al. and this NPRM, the estimated number of complaints filed annually is approximately nine.

*Total Burden Hours* (annually including all respondents): 3,126 (sum of (i) estimated hours per complaint (469) × total number of estimated, existing complaints (4), and (ii) estimated hours per additional complaints (250) × total number of those complaints (5)).

*Total ''Non-Hour Burden'' Cost* (such as start-up costs and mailing costs): $9,748 (sum of (i) estimated non-hour burden cost per complaint ($1,462) × total number of estimated, existing complaints (4), and (ii) estimated non-hour burden cost per additional complaint ($780) × total number of those complaints (5)).

*Needs and Uses:* Under the Board's regulations, persons may file complaints before the Board pursuant to 49 CFR part 1111 seeking redress for alleged violations of provisions of the Interstate Commerce Act, Public Law 104–88, 109 Stat. 803 (1995). In the last few years, the most significant complaints filed at the Board allege that railroads are charging unreasonable rates or that they are engaging in unreasonable practices. *See, e.g.,* 49 U.S.C. 10701, 10704, and 11701. As described in more detail above in the NPRM, the Board is proposing new rules that would allow complainants in these rate cases to use a new simplified market dominance approach to make a prima facie showing before the Board. As a result of the reduction in burden from this new simplified approach, it is expected that additional complaints would be filed. The collection by the Board of these complaints, and the agency's action in conducting proceedings and ruling on the complaints, enables the Board to meet its statutory duties.

[FR Doc. 2019–20087 Filed 9–16–19; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 190909–0025]**

**RIN 0648–BI98**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 42

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Amendment 42 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 42), as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council). This proposed rule would add three new devices to the Federal regulations as options for fishermen with Federal commercial or charter vessel/headboat permits for South Atlantic snapper-grouper to meet existing requirements for sea turtle release gear, and would update the regulations to simplify and clarify the requirements for other sea turtle release

gear. This proposed rule would also modify the FMP framework procedure to allow for future changes to release gear and handling requirements for sea turtles and other protected resources. The purpose of this proposed rule is to allow the use of new devices to safely handle and release incidentally captured sea turtles, clarify existing requirements, and streamline the process for making changes to the release devices and handling procedures for sea turtles and other protected species.

**DATES:** Written comments must be received by October 17, 2019.

**ADDRESSES:** You may submit comments on the proposed rule identified by ''NOAA–NMFS–2019–0047'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0047,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Frank Helies, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 42 may be obtained at *www.regulations.gov* or from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-42-modifications-sea-turtle-release-gear-and-framework-procedure-snapper-grouper.* Amendment 42 includes a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305; email: *frank.helies@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** NMFS and the South Atlantic Council manage the snapper-grouper fishery under the FMP. The FMP was prepared by the South Atlantic Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

## Background

The Endangered Species Act (ESA) directs all Federal agencies to ensure that any action they authorize, fund, or carry-out is not likely to jeopardize the continued existence of endangered or threatened species, or destroy or adversely modify designated critical habitat. In June 2006, NMFS issued a biological opinion (2006 BiOp), in accordance with section 7 of the ESA, that evaluated the impact of the South Atlantic snapper-grouper fishery on ESA-listed sea turtles and smalltooth sawfish. The 2006 BiOp concluded that the anticipated incidental take of sea turtles and smalltooth sawfish by the South Atlantic snapper-grouper fishery is not likely to jeopardize their continued existence, or destroy or adversely modify designated critical habitat. However, the 2006 BiOp required that within the fishery reasonable and prudent measures be taken to minimize stress and increase the survival rates of any sea turtles and smalltooth sawfish taken in the fishery.

In response to the 2006 BiOp, the South Atlantic Council developed measures in Amendment 15B to the FMP (Amendment 15B) to increase the likelihood of survival of released sea turtles and smalltooth sawfish caught incidentally in the South Atlantic snapper-grouper fishery. The final rule for Amendment 15B required fishermen on vessels with Federal commercial or charter vessel/headboat permits for South Atlantic snapper-grouper to possess a specific set of release gear, and comply with sea turtle and smalltooth sawfish handling and release protocols and guidelines (74 FR 58902, November 16, 2009). The final rule also required those fishermen to maintain a reference copy of the NMFS sea turtle handling and release protocols document titled, ''Careful Release Protocols for Sea Turtle Release with Minimal Injury'' (Release Protocols), in the event a sea turtle is incidentally captured. These South Atlantic snapper-grouper permit holders are also required to post a NMFS placard of sea turtle handling and release guidelines inside their vessel wheelhouse or in an easily viewable area on the vessel if there is no wheelhouse.

The required gear for safe sea turtle handling and release was initially the same gear as required for vessels using pelagic longline gear for highly migratory species. However, most effort in the snapper-grouper fishery in the South Atlantic occurs on smaller vessels using lighter tackle than that used when longline fishing for pelagic species. Subsequent to Amendment 15B, Comprehensive Ecosystem-Based Amendment 2 modified sea turtle release gear requirements to allow smaller vessels to have fewer gear requirements than for pelagic longline vessels based on the freeboard height of the snapper-grouper fishing vessel (76 FR 82183, December 30, 2011).

Since implementation of Amendment 15B, the Release Protocols have been revised twice, once in 2008, and again in 2010. NMFS recently published a 2019 revision to the Release Protocols that includes the sea turtle release devices recently approved by the NMFS Southeast Fisheries Science Center (SEFSC) available at *https://www.fisheries.noaa.gov/southeast/endangered-species-conservation/sea-turtle-and-smalltooth-sawfish-release-gear-protocols.* Fishermen participating in the snapper-grouper fishery would be able to use these new devices to meet sea turtle release gear requirements if they are implemented as part of the regulations contained in this proposed rule.

In 2018, the Gulf of Mexico Fishery Management Council took final action on similar management measures to allow federally permitted fishermen in the commercial and charter vessel/headboat components of the reef fish fishery to use the newly-approved devices to meet requirements for sea turtle release gear. The final rule for Amendment 49 to the FMP for Reef Fish Resources in the Gulf of Mexico (Gulf) updated those fishery regulations to incorporate the new devices, and simplified and clarified the requirements for other sea turtle release gear (84 FR 22383, May 17, 2019). If NMFS implements this proposed rule for Amendment 42, regulations for release gear and handling requirements for sea turtles in the Gulf and South Atlantic would be consistent, thereby benefiting fishermen that fish in both areas.

## Management Measures Contained in This Proposed Rule

This proposed rule would add three new sea turtle handling and release devices to the Federal regulations, clarify the requirements for other currently required gear, and modify the FMP framework procedure to include

future changes to release gear and handling requirements for sea turtles and other protected resources.

*New Sea Turtle Release Gear*

For vessels with Federal commercial and charter vessel/headboat permits for South Atlantic snapper-grouper, this proposed rule would add three new devices to the Federal regulations that have been approved for use by SEFSC to safely handle and release sea turtles, and provide more options for fishermen to fulfill existing requirements. Details for these new devices can be found in Amendment 42 and this proposed rule, and the Release Protocols. Complete construction specifications for all SEFSC-approved handling and release devices are included in the 2019 NMFS SEFSC Technical Memorandum titled, ''Design Standards and Equipment for Careful Release of Sea Turtles Caught in Hook-and-Line Fisheries'' available at *https://www.fisheries.noaa.gov/southeast/endangered-species-conservation/sea-turtle-and-smalltooth-sawfish-release-gear-protocols.* NMFS expects the proposed new release devices in this proposed rule would increase flexibility for fishermen and regulatory compliance within the snapper-grouper fishery, which may result in positive benefits to sea turtles.

Two of the new sea turtle handling devices are a collapsible hoop net and a sea turtle hoist (net). Both of these devices are more compact versions of the currently required long-handled dip net, and would be used for bringing an incidentally captured sea turtle on board the fishing vessel to remove fishing gear from the sea turtle. For the collapsible hoop net, the net portion is attached to hoops made of flexible stainless steel cable; when the collapsible hoop net is folded over on itself for storage, its size reduces to about half of its original diameter. Additionally, there are two versions of the sea turtle hoist. One version consists of the net portion securely fastened to a frame, providing a relatively taut platform for the sea turtle to be brought on board. Another version creates a basket with the frame and net that holds the sea turtle as it is brought on board. Both the collapsible hoop net and the sea turtle hoist use rope handles attached to either side of the frame, in place of the rigid handle on the dip net. Generally, the collapsible hoop net or hoist would be used to bring sea turtles on board vessels with a high freeboard when it is not feasible to use a dip net.

The third new device is a dehooker that can be used to remove an externally embedded hook from a sea turtle. This device has a squeeze handle that secures the hook into notches at the end of the shaft of the dehooker, so the hook can be twisted out. This new device would provide another option for fishermen to comply with the regulations for a short-handled dehooker for external hooks.

*Requirements for Existing Sea Turtle Release Gear*

This proposed rule also would update the requirements of some currently approved devices for clarity and simplicity, and to aid fishermen and law enforcement with compliance and enforcement efforts. Existing regulations use the word ''approximately'' to define some gear specifications, and this proposed rule would replace ''approximately'' in the applicable regulations where precise specifications would clarify requirements for the dimensions or lengths of several devices. The revisions would provide for either a minimum size dimension or a size range for the short-handled dehookers for external and internal hooks, bite block on the short-handled internal use dehooker, long-nose or needle-nose pliers, bolt cutters, and the block of hard wood and hank of rope when used as mouth openers and gags. In general, these clarifications would either establish the currently approximate dimensions as a minimum requirement, or establish the smaller end of the current size range for the required dimensions as a minimum. Other proposed changes to the gear requirements follow.

Current regulations specify that short- and long-handled dehookers must be constructed of 316L stainless steel, which is resistant to corrosion from salt water. The SEFSC has also approved 304L stainless steel for the construction of all short-handled and long-handled dehookers. This proposed additional grade of stainless steel is commonly available and is also corrosion resistant.

Another required device to assist with removing fishing gear from a sea turtle is a pair of monofilament line cutters. Current regulations state that the monofilament line cutters must have cutting blades of 1-inch (2.5 cm) in length (appendix F to 50 CFR part 622). However, SEFSC has clarified that the blade length must be a minimum of 1 inch (2.5 cm) but could be longer.

Another required gear type is mouth openers and gags, used to hold a sea turtle's mouth open to remove fishing gear. At least two of the seven types of mouth openers and gags are required on board. Current regulations state that canine mouth gags, an option for this gear requirement, must have the ends covered with clear vinyl tubing, friction tape, or similar, to pad the surface. However, SEFSC determined that this was not necessary and could result in the canine mouth gags not functioning properly. This proposed rule would remove from the regulations the requirement to cover the ends of the canine mouth gags with these materials.

A life-saving device on a vessel, such as a personal flotation device or life ring buoy, may currently be used as the required cushion or support device for sea turtles brought aboard a vessel to remove fishing gear. However, this proposed rule would add language to clarify that any life-saving device used to fulfill the sea turtle safe handling requirements cannot also be used to meet U.S. Coast Guard safety requirements of one flotation device per person on board the vessel.

Lastly, fishermen are currently required to maintain a paper copy of the Release Protocols on each vessel for reference in the event a sea turtle is incidentally captured. This proposed rule would allow fishermen to use an electronic copy of the document to fulfill the requirement, as long as the electronic document is readily available for viewing and reference during a trip.

*FMP Framework Procedure*

Currently, adding or changing careful release devices and protocols for incidentally caught sea turtles and other protected species requires an amendment to the FMP. This limits the South Atlantic Council and NMFS' ability to implement new release devices and handling requirements in a timely manner. The FMP amendment and rulemaking process generally involves more detailed analyses and a lengthier timeline prior to implementation than rulemaking done through a framework procedure. The FMP contains a framework procedure to allow the South Atlantic Council to modify certain management measures via an expedited process (see 50 CFR 622.194). The FMP framework procedure was last modified by the final rule implementing Amendment 27 to the FMP (78 FR 78770, December 27, 2013).

Amendment 42 and this proposed rule would allow changes to the sea turtle release gear and handling techniques under the framework procedure. For example, the South Atlantic Council could more quickly add a new release device for sea turtles if approved by the SEFSC. The South Atlantic Council decided that making these changes through an expedited process may have beneficial biological and socio-economic impacts. The South Atlantic Council concluded that the revised framework procedure would

still allow adequate opportunity for the public to comment on any future proposed regulatory changes.

**Incorporation by Reference**

If a sea turtle is incidentally caught during fishing operations, the owner or operator of a federally permitted commercial vessel or a recreational charter vessel or headboat for South Atlantic snapper-grouper must have the 2019 Release Protocols document (incorporated by reference, see § 622.179(b) below) available for reference on board to safely handle and release the animal. In addition, a placard summarizing sea turtle handling and release guidelines (incorporated by reference, see § 622.179(b) below) must be posted on the vessel. The Release Protocols document is a NOAA Technical Memorandum published by the NMFS SEFSC. The placard is also contained within the Release Protocols document, and the placard is available in English, Spanish, and Vietnamese. Both the Release Protocols document and placard are available at the NMFS Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701, phone: 727–824–5301, or for digital download and printing from this website: *https://www.fisheries.noaa.gov/southeast/endangered-species-conservation/sea-turtle-and-smalltooth-sawfish-release-gear-protocols.*

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 42, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble.

The objectives of this proposed rule are to provide greater flexibility to vessels in the commercial and for-hire snapper-grouper fishing industries (*i.e.,* with Federal commercial and charter vessel/headboat permits for South Atlantic snapper-grouper) in complying with release gear regulations, to clarify existing requirements for fishery participants and law enforcement officers, and to streamline the process for future revisions to release gear and handling procedures for incidentally captured sea turtles and other protected species after approval by the SEFSC.

On July 18, 2019, the Small Business Administration (SBA) issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (*i.e.,* receipts- and assets-based) for inflation for many industries. For for-hire fishing businesses, the interim final rule changes the small business size standard from $7.5 million in annual gross receipts to $8 million. *See* 84 FR 34273 (adjusting NAICS 487210 (Scenic and Sightseeing Transportation, Water)).

Pursuant to the Regulatory Flexibility Act, and prior to SBA's July 18, 2019 interim final rule, a certification was developed for this proposed rule using SBA's former size standard. NMFS has reviewed the analyses prepared for this proposed rule in light of the new size standards. Under the former SBA size standard, all for-hire fishing businesses subject to this proposed rule were considered small entities, and they all would continue to be considered small under the new standard. NMFS does not think that the new size standard affects analyses prepared for this proposed rule and solicits public comment on the analyses in light of the new size standard.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the SBA that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows. All monetary estimates are in 2017 dollars, consistent with the data and estimates in Amendment 42.

This proposed rule, if implemented, would allow vessels in the commercial and for-hire South Atlantic snapper-grouper fishing industries to use a collapsible hoop net or sea turtle hoist rather than a dip net to bring an incidentally captured sea turtle on board, and add a new dehooking device to remove an externally embedded hook from a sea turtle.

This proposed rule would also clarify requirements for currently required gear used to remove fishing gear from sea turtles to aid fishermen and law enforcement personnel with compliance and enforcement efforts. Existing regulations use the word ''approximately'' to define some gear specifications, and this proposed rule would replace ''approximately'' in the applicable regulations where precise specifications would clarify requirements for the dimensions or lengths of several devices, including the short-handled dehookers for internal and external hooks, bite block on the short-handled internal use dehooker, long-nose or needle-nose pliers, bolt cutters, and the block of hard wood and hank of rope when used as mouth openers and gags. In general, these clarifications would either establish the currently approximate dimensions as a minimum, or establish the smaller end of the current size range for the required dimensions as a minimum. Specific proposed changes of importance from a cost perspective are requiring long-nose or needle-nose pliers with a minimum length of 11 inches (28 cm), rather than ''approximately'' 12 inches (30 cm) in overall length; and changing the required length of monofilament line cutters from ''approximately'' 7.5 inches (19 cm) to a minimum of 6 inches (15 cm).

This proposed rule is expected to directly regulate vessels (businesses) in the commercial and for-hire South Atlantic snapper-grouper fishing industries. In 2017, the number of vessels with a valid or renewable Federal charter vessel/headboat permit for snapper-grouper was 1,982. In addition, there were 554 vessels with valid or renewable unlimited snapper-grouper commercial permits, and 114 vessels with 225-lb trip-limited snapper-grouper commercial permits. Based on information provided in a recent analysis regarding permit portfolios of commercial snapper-grouper permit holders, NMFS assumes that 21.8 percent of vessels with unlimited snapper-grouper commercial permits (121 vessels) and 23.6 percent of vessels with 225-lb trip limited commercial permits (27 vessels) also held a Federal charter vessel/headboat permit for snapper-grouper. Based on this information, 148 vessels are estimated to hold both a Federal commercial and a Federal charter vessel/headboat permit for South Atlantic snapper-grouper. Thus, an estimated 2,502 vessels are expected to be directly regulated by this proposed rule.

Although NMFS possesses complete ownership data regarding businesses and vessels that participate in the Gulf red snapper, and the Gulf groupers and tilefishes individual fishing quota (IFQ) programs, ownership data are incomplete regarding businesses that

possess commercial or charter vessel/headboat permits for South Atlantic snapper-grouper but do not also commercially harvest Gulf IFQ species. Therefore, it is not currently feasible to accurately determine affiliations between these particular businesses. Because of the incomplete ownership data, for purposes of this analysis, NMFS assumes each of these vessels is independently owned by a single business, which is expected to result in an overestimate of the actual number of businesses directly regulated by this proposed rule. Thus, this proposed rule is estimated to directly regulate 2,502 businesses in the commercial and for-hire snapper-grouper fishing industries.

For vessels with commercial South Atlantic snapper-grouper permits that were active in the snapper-grouper fishing industry from 2013 through 2017, average annual gross revenue was $45,476 per vessel. Annual net revenue from operations for vessels in the commercial snapper-grouper fishing industry was approximately 5 percent of their average annual gross revenue from 2014 through 2016, while average net cash flow was about 19 percent of their average annual gross revenue during this time. Net revenue from operations is the best available measure of economic profit for these vessels, though net cash flow may also be of interest to fishery participants and managers. Average annual net revenue from operations (economic profit) for snapper-grouper vessels is estimated to be $2,046 per vessel, while average annual net cash flow per vessel is estimated to be $8,640 per vessel.

The average annual gross revenue for a federally permitted headboat in the South Atlantic is $212,680, while the average annual gross revenue for a federally permitted charter vessel in the South Atlantic is $120,297. Estimates of net revenue from operations and net cash flow are not available for vessels with Federal charter vessel/headboat permits for South Atlantic snapper-grouper.

The SBA has established size standards for all major industry sectors in the U.S. including for-hire fishing businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of $7.5 million for all its affiliated operations worldwide. In 2017, the maximum annual gross revenue for a single headboat in the South Atlantic was about $748,000. Because average annual gross revenue for headboats in the South Atlantic is significantly greater than average annual gross revenue for charter vessels, it is assumed the maximum annual gross revenue for charter vessels is less than $748,000.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in its field of operations (including its affiliates). For vessels with a Federal commercial permit for South Atlantic snapper-grouper, the maximum annual gross revenue earned by a single vessel that was active in the industry from 2013 through 2017 was approximately $1.43 million.

This proposed rule, if implemented, would be expected to directly regulate all 2,502 vessels with Federal commercial or charter vessel/headboat permits in the South Atlantic snapper-grouper fishing industry. All directly regulated businesses have been determined, for the purpose of this analysis, to be small entities. Based on this information, the proposed rule is expected to affect a substantial number of small entities.

Allowing federally permitted businesses (vessels) in the commercial and for-hire South Atlantic snapper-grouper fishing industries to use a collapsible hoop net or sea turtle hoist rather than a dip net to handle incidentally captured sea turtles is expected to reduce the cost of complying with the associated regulatory requirement by about $40 per business (vessel) on average. However, when this gear is replaced, typically about once every 7 years, the average cost savings to each business (vessel) is about $6 per year and thus is expected to minimally increase these businesses' profitability.

Allowing federally permitted businesses in the commercial and for-hire South Atlantic snapper-grouper fishing industries to use a new dehooking device to remove an externally embedded hook from a sea turtle is not expected to change the cost of complying with the associated regulatory requirement as its cost is within the range of the currently allowed dehooking devices. Thus, NMFS does not expect the profitability of commercial and for-hire vessels to change as a result of allowing this new dehooking device.

Clarifying the dimensions or length requirements for several other sea turtle release devices in cases where the regulations currently use the word ''approximately'' to describe those requirements or are otherwise ambiguous is expected to aid fishermen in the commercial and for-hire South Atlantic snapper-grouper fishing industries with compliance, as well as aid law enforcement efforts, though some clarifications would slightly reduce flexibility. As such, these clarifications are expected to reduce the risk of these businesses incurring a fine or other penalty for unintentional non-compliance with the requirements, and thus would generally be expected to reduce the costs of complying with those requirements.

For example, allowing federally permitted vessels in the commercial and for-hire South Atlantic snapper-grouper fishing industries to use long-nose or needle-nose pliers with an overall length of 11 inches (28 cm) or greater, rather than ''approximately'' 12 inches (30 cm), is expected to reduce the cost of complying with the associated regulatory requirement for at least some of these businesses. Due to the ambiguity of the current length requirement, as well as the limited market availability of pliers with an approximate length of 12 inches (30 cm), it has been difficult for some vessel owners to find pliers that clearly comply with the current regulation. As a result, some of these owners currently use pliers that have an overall length of 11 inches (28 cm). Thus, the proposed regulatory change would eliminate the risk of vessel owners that currently use pliers with an overall length of 11 inches (28 cm) from potentially being found non-compliant with the current regulation and having to purchase new pliers, which cost around $10, that comply with the current regulation.

In addition, modifying the required length for approved monofilament line cutters from ''approximately'' 7.5 inches (19 cm) in length to a minimum of 6 inches (15 cm) in length would allow federally permitted vessels in the commercial and for-hire South Atlantic snapper-grouper fishing industries to use monofilament line cutters as small as 6 inches (15 cm) in length. Monofilament line cutters 6 inches (15 cm) in length and longer are commonly available in the market. The cost of monofilament line cutters ranges from $15 to $66, depending on the material and features. Thus, the proposed regulatory change would eliminate the risk of vessel owners currently using

monofilament line cutters 6 inches (15 cm) in length from potentially being found non-compliant with the current regulation and having to purchase new monofilament line cutters that comply with the current regulations.

Although federally permitted vessel owners are expected to be able to meet the clarified dimension and length requirements in this proposed rule without purchasing new gear, it is possible that a few may incur costs to replace gear that would be non-compliant. For example, though unlikely, it is possible that some commercial and for-hire fishing vessel owners could be using monofilament line cutters less than 6 inches (15 cm) in length (*e.g.,* 5.5 inches (14 cm) in length) and consider this to be compliant with the current ''approximately'' 7.5-inch (19-cm) requirement. These vessel owners would have to purchase new monofilament line cutters and incur the associated cost. However, NMFS expects few if any commercial or for-hire fishing vessel owners to consider a length more than 25 percent less than ''approximately'' 7.5 inches (19 cm) in length as compliant with the current requirement. Thus, the potential costs resulting from this remote possibility are expected to be minimal if not zero.

Modifying the snapper-grouper FMP framework procedure to include changes to release gear requirements through the abbreviated framework process is an administrative action that does not alter any requirements that directly regulate federally permitted vessels in the commercial and for-hire South Atlantic snapper-grouper fishing industries. Therefore, this action is not expected to affect the profitability of any businesses that possess permits in these industries.

Based on the information above, a reduction in profits for a substantial number of small entities is not expected as a result of this proposed rule. Thus, this proposed rule would not have a significant economic impact on a substantial number of small entities, so an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

Charter vessel, Commercial, Fisheries, Fishing, Headboat, Incorporation by reference, Sea turtle, South Atlantic.

Dated: September 10, 2019.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.29, revise paragraph (a)(1)(ii) to read as follows:

**§ 622.29 Conservation measures for protected resources.**

(a) * * *

(1) * * *

(ii) Such owner or operator must also comply with the sea turtle interaction mitigation measures, including the release gear and handling requirements specified in appendix F of this part.

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■ 3. In § 622.179, revise paragraph (a)(1) and add paragraph (b) to read as follows:

**§ 622.179 Conservation measures for protected resources.**

(a) * * *

(1) *Sea turtle conservation measures.* (i) The owner or operator of a vessel for which a commercial vessel permit for South Atlantic snapper-grouper or a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(a)(1) and (b)(1), respectively, and whose vessel has on board any hook-and-line gear, must have the 2019 version of the NMFS document titled, ''Careful Release Protocols for Sea Turtle Release with Minimal Injury'' available for reference on board electronically or have a paper copy on board inside the wheelhouse, or within a waterproof case if there is no wheelhouse. In addition, the NMFS sea turtle handling and release guidelines placard must be posted inside the wheelhouse or an easily viewable area on the vessel if there is no wheelhouse.

(ii) Such owner or operator must also comply with the sea turtle interaction mitigation measures, including the release gear and handling requirements specified in appendix F of this part.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board a net or hoist, tire or other support device, short-handled dehooker(s) for internal and external hooks, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers or mouth gags. This equipment must meet the specifications described in appendix F of this part.

(iv) Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a net or hoist, tire or other support device, long-handled line clipper or cutter, short-handled dehooker(s) for internal and external hooks, long-handled dehooker(s) for internal and external hooks, a long-handled device to pull an inverted ''V'' in the fishing line, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers or mouth gags. This equipment must meet the specifications described in appendix F of this part.

* * * * *

(b) *Incorporation by reference.* The standards required in paragraph (a)(1) of this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the National Marine Fisheries Service, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701, phone: 727–824–5301, website: *https://www.fisheries.noaa.gov/southeast/endangered-species-conservation/sea-turtle-and-smalltooth-sawfish-release-gear-protocols,* and is available from the sources listed in paragraphs (b)(1) and (2) of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(1) U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149.

(i) Careful Release Protocols for Sea Turtle Release with Minimal Injury, NOAA Technical Memorandum NMFS–SEFSC–735, Stokes, L., and Bergmann, C. (Editors), 2019.

(ii) [Reserved]

(2) U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701.

(i) Sea Turtle Handling/Release Guidelines: Quick Reference for Hook and Line Fisheries, English, Spanish, Vietnamese, Revised April 2019.

(ii) [Reserved]

■ 4. In § 622.194, revise the introductory text and add paragraph (b) to read as follows:

**§ 622.194 Adjustment of management measures.**

In accordance with the framework procedures of the FMP for the Snapper-Grouper Fishery of the South Atlantic Region, the RA may establish or modify the items specified in paragraph (a) of this section for South Atlantic snapper-grouper and wreckfish, or paragraph (b) of this section for sea turtles and other protected species.

* * * * *

(b) Possession, specifications, and use of required release gear and handling requirements for sea turtles and other protected species.

■ 5. Revise appendix F to part 622 to read as follows:

**Appendix F to Part 622—Specifications for Sea Turtle Release Gear and Handling Requirements**

*A. Sea Turtle Release Gear*

1. *Long-handled line clipper or cutter.* Line cutters are intended to cut fishing line as close as possible to the hook, and assist in removing line from an entangled sea turtle to minimize any remaining gear upon release. One long-handled line clipper or cutter and one set of replacement blades are required to be on board. The minimum design standards are as follows:

(a) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0 to 2.1-mm (0.078 to 0.083-inch) diameter monofilament line (approximately 400 to 450-lb test strength) or polypropylene multistrand material, known as braided or tarred mainline, and the cutting blade must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and the blade(s) must be easily replaceable during a trip if necessary. The extra set of replacement blades must meet these standards and be carried on board to replace all cutting surfaces on the line cutter or clipper.

(b) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum length of 6 ft (1.8 m), whichever is greater. The extended reach handle may break down into sections for storage, but it is not required. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

2. *Long-handled dehooker for internal hooks.* One long-handled dehooker to remove internal hooks from sea turtles that cannot be brought on board is required on the vessel. It should also be used to engage an unattached hook when a sea turtle is entangled but not hooked, and line is being removed. The design must shield the point of the hook and prevent the hook from re-engaging during the removal process. The minimum design standards are as follows:

(a) *Hook removal device.* The dehooker must be constructed of 3/16 inch (4.8-mm) to 5/16 inch (7.9-mm) diameter 316L or 304L stainless steel and have a dehooking end no larger than 1 7/8 inches (4.8 cm) outside diameter. The dehooker must securely engage and control the leader while shielding the point to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The dehooker must be of a size appropriate to secure the range of hook sizes and styles used on the vessel.

(b) *Extended reach handle.* The dehooking end that secures the fishhook must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.8 m), whichever is greater. The extended reach handle may break down into sections for storage, but it is not required. The handle must be sturdy and strong enough to facilitate the secure attachment of the dehooking end.

3. *Long-handled dehooker for external hooks.* One long-handled dehooker to remove external hooks from sea turtles that cannot be brought on board is required on the vessel. The long-handled dehooker for internal hooks described in paragraph A.2. of this appendix may be used to comply with this requirement. The minimum design standards are as follows:

(a) *Hook removal device.* A long-handled dehooker must be constructed of 3/16 inch (4.8-mm) to 5/16 inch (7.9-mm) diameter 316L or 304L stainless steel and have a dehooking end no larger than 1 7/8 inches (4.8 cm) outside diameter. The dehooking end that secures the fishhook must be blunt with all edges rounded. The dehooker must be of a size appropriate to secure the range of hook sizes and styles used on the vessel.

(b) *Extended reach handle.* The handle must be a minimum length equal to the freeboard of the vessel or 6 ft (1.8 m), whichever is greater. The extended reach handle may break down into sections for storage, but it is not required.

4. *Long-handled device to pull an ''inverted V''.* One long-handled device to pull an ''inverted V'' is required on board. This tool is used to pull an ''inverted V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the 2019 version of the document titled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' for dehooking and disentangling sea turtles. A long-handled J-style dehooker as described in paragraph A.3. of this appendix may be used to comply with this requirement. The minimum design standards are as follows:

(a) *Hook end.* This device, such as a standard boat hook or gaff must be constructed of stainless steel or aluminum; if a long-handled J-style dehooker is used to comply with this requirement, it must be constructed of 316L or 304L stainless steel. The semicircular or ''J'' shaped hook end must be securely attached to the handle to allow the hook end to engage and pull an ''inverted V'' in the fishing line. A gaff or any other tool with a sharp point is to be used only for holding fishing lines and must never contact the sea turtle.

(b) *Extended reach handle.* The handle must have a minimum length equal to the freeboard of the vessel or must be at least 6 ft (1.8 m) in length, whichever is greater. The extended reach handle may break down into sections for storage, but it is not required. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook end.

5. *Net or hoist.* One approved net or hoist is required on board. These devices are to be used to facilitate safe handling of sea turtles by allowing them to be brought on board for fishing gear removal, without causing further injury to the animal. Sea turtles must not be brought on board without the use of a net or hoist. There must be no sharp edges or burrs on the hoop or frame, or where the hoop or frame attaches to the handle. There is no requirement for the hoop or frame to be circular as long as it meets the applicable minimum specifications. In this appendix, bar measure means the non-stretched distance between a side knot and a bottom knot of a net mesh; also known as the square mesh measurement. The

types and minimum design standards for approved nets and hoists are as follows:

(a) *Dip net*—(i) *Size of the net.* The dip net must have a sturdy net hoop or frame of at least 31 inches (78.7 cm) inside diameter and a bag depth of at least 38 inches (96.5 cm) to accommodate sea turtles up to 3 ft (0.9 m) in carapace (shell) length. The bag mesh size must not exceed 3 inches (7.6 cm), bar measure. The net hoop or frame must be made of a rigid material strong enough to facilitate the sturdy attachment of the net.

(ii) *Extended reach handle.* The dip net hoop or frame must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or at least 6 ft (1.8 m) in length, whichever is greater. The handle and net must be able to support a minimum of 100 lb (45.4 kg) without breaking or significant bending or distortion. The extended reach handle may break down into sections for storage, but it is not required.

(b) *Collapsible hoop net*—(i) *Size of the net.* The collapsible hoop net must have a sturdy net hoop of at least 31 inches (78.7 cm) inside diameter and a bag depth of at least 38 inches (96.5 cm) to accommodate sea turtles up to 3 ft (0.9 m) in carapace (shell) length. The bag mesh size must not exceed 3 inches (7.6 cm), bar measure. The net hoop must be strong enough to facilitate the sturdy attachment of the net.

(ii) *Extended reach handle.* The collapsible hoop net must be securely fastened with rope(s) or other line(s) connected to the hoop with a minimum length equal to or greater than 150 percent of the freeboard, or at least 6 ft (1.8 m) in length, whichever is greater. The rope(s) and net must be able to support a minimum of 100 lb (45.4 kg) without breaking or significant distortion.

(c) *Small hoist*—(i) *Size of the hoist.* The sea turtle hoist must have a sturdy net hoop or frame of at least 31 inches (78.7 cm) inside diameter to accommodate sea turtles up to 3 ft (0.9 m) in carapace (shell) length. The net mesh size must not exceed 3 inches (7.6 cm), bar measure. If polyvinyl chloride, or PVC, pipe is used to construct the hoist, the pipe fittings must be glued together and a minimum strength of Schedule 40 pipe must be used. The hoist hoop or frame must be made of a rigid material strong enough to facilitate the sturdy attachment of the net.

(ii) *Extended reach handle.* The sea turtle hoist must be securely fastened with ropes or other lines connected to the hoop or frame with a minimum length equal to or greater than 150 percent of the freeboard, or at least 6 ft (1.8 m) in length, whichever is greater. The ropes and hoist hoop or frame must be able to support a minimum of 100 lb (45.4 kg) without breaking or significant distortion.

6. *Cushion or support device.* A standard automobile tire free of exposed steel belts, a boat cushion, or any other comparable cushioned and elevated surface, is required for supporting a sea turtle in an upright orientation while the sea turtle is on board. The cushion or support device must be appropriately sized to fully support a range of sea turtle sizes. Any life-saving device that would be used to support a sea turtle on board must be dedicated for that purpose and in addition to all minimum human safety at sea requirements.

7. *Short-handled dehooker for internal hooks.* One short-handled dehooker for removing internal hooks is required on board. This dehooker is designed to remove internal hooks from sea turtles brought on board. This dehooker can also be used on external hooks. The minimum design standards are as follows:

(a) *General.* The dehooker must allow the hook to be secured and the hook point shielded without re-engaging during the removal process. It may not have any unprotected terminal points, including blunt ones, as this could cause injury to the esophagus during hook removal. A sliding plastic bite block must be permanently installed around the shaft to protect the beak and facilitate hook removal in case a sea turtle bites down on the dehooker. The dehooker must be of a size appropriate to secure the range of hook sizes and styles used on the vessel.

(b) *Specifications.* The dehooker must be constructed of 316L or 304L stainless steel. The shaft must be 3/16 inch (4.8-mm) to 5/16 inch (7.9-mm) in diameter. The shaft must be 16 to 24 inches (40.6 cm to 60.7 cm) long, with approximately a 4 to 6 inch (10.2 to 15.2-cm) long tube T-handle, wire loop handle, or similar. The bite block must be constructed of a 3/4 to 1-inch (1.9 to 2.5-cm) inside diameter high impact rated, rigid plastic cylinder (*e.g.,* Schedule 80 PVC) that is 4 to 6 inches (10.2 to 15.2 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The dehooking end must be no larger than 1 7/8 inches (4.8 cm) outside diameter.

8. *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks is required on board. This dehooker is designed to remove external hooks from sea turtles brought on board. The short-handled dehooker for internal hooks required to comply with paragraph A.7. of this appendix may be used to comply with this requirement. The minimum design standards are as follows:

(a) *Fixed handle dehooker*—(i) *General.* The dehooking end that secures the fishhook must be blunt and all edges rounded. The dehooker must be of a size appropriate to secure the range of hook sizes and styles used on the vessel.

(ii) *Specifications.* The dehooker must be constructed of 316L or 304L stainless steel. The shaft must be 3/16 inch (4.8-mm) to 5/16 inch (7.9-mm) in diameter. The shaft must be 16 to 24 inches (40.6 to 60.7 cm) long with approximately a 4 to 6-inch (10.2 to 15.2-cm) long tube T-handle, wire loop handle, or similar.

(b) *Squeeze handle dehooker*—(i) *General.* The dehooking end that secures the fishhook must be blunt and all edges rounded. The dehooker must be able to secure the range of hook sizes and styles used on the vessel. This dehooker secures a fishhook for removal by squeezing the handles together using one hand to grab and pull the hook into notches at the top of the shaft of the dehooker.

(ii) *Specifications.* The dehooker must be constructed of 316L or 304L stainless steel. The overall length must be a minimum of 11 inches (27.9 cm) long.

9. *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove hooks from the sea turtle's flesh or for removing hooks from the front of the mouth. They can also hold PVC splice couplings in place, when used as mouth gags. The minimum design standards are as follows: The long-nose or needle-nose pliers must be a minimum of 11 inches (27.9 cm) in length. It is recommended that the pliers be constructed of stainless steel or other corrosion resistant metal material.

10. *Bolt cutters.* One pair of bolt cutters is required on board. Required bolt cutters may be used to cut off the eye or barb of a hook to facilitate the hook removal without causing further injury to the sea turtle. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. The minimum design standards are as follows: The bolt cutters must be a minimum of 14 inches (35.6 cm) in total length, with blades that are a minimum of 4 inches (10.2 cm) long and 2 1/4 inches (5.7 cm) wide, when closed. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to 1/4 inch (6.4-mm) wire diameter, and they

must be capable of cutting through the hooks used on the vessel.

11. *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line entangling a sea turtle, or to cut fishing line as close to the eye of the hook as possible if the hook is swallowed or if the hook cannot be removed. The minimum design standards are as follows: The monofilament line cutters must be a minimum of 6 inches (15.2 cm) in length. The blades must be a minimum of 1 inch (2.5 cm) in length and 5/8 inches (1.6 cm) wide, when closed.

12. *Mouth openers or mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing internal hooks from sea turtles brought on board. They must allow access to the hook or line without causing further injury to the sea turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers or mouth gags described in paragraphs A.12.(a) through (g) of this appendix are required.

(a) *A block of hard wood.* A block of hard wood of a type that does not splinter (*e.g.,* maple) with rounded and smoothed edges, or a wooden-handled brush with the bristles removed. The dimensions must be a minimum of 10 inches (25.4 cm) by 3/4 inch (1.9 cm) by 3/4 inch (1.9 cm).

(b) *A set of three canine mouth gags.* A set of canine mouth gags must include one of each of the following sizes: Small—5 inches (12.7 cm), medium—6 inches (15.2 cm), and large—7 inches (17.8 cm). They must be constructed of stainless steel.

(c) *A set of two sturdy dog chew bones.* Required canine chews must be constructed of durable nylon or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of sea turtle beak sizes, a set must include one large (5½ to 8 inches (14 cm to 20.3 cm) in length), and one small (3½ to 4½ inches (8.9 cm to 11.4 cm) in length) canine chew bones.

(d) *A set of two rope loops covered with protective tubing.* A required set consists of two 3-ft (0.9-m) lengths of poly braid rope (3/8 inch (9.5-mm) diameter suggested), each covered with an 8-inch (20.3-cm) long section of ½ inch (1.3-cm) to 3/4 inch (1.9-cm) diameter light duty garden hose or similar flexible tubing, and each rope tied into a loop.

(e) *A hank of rope.* A length of soft braided or twisted nylon rope a minimum of 3/16 inch (4.8-mm) diameter must be folded to create a hank, or looped bundle, of rope. The rope must create a hank of 2 to 4 inches (5.1 cm to 10.2 cm) in thickness.

(f) *A set of four PVC splice couplings.* A required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.5 cm), 1¼ inch (3.2 cm), 1½ inch (3.8 cm), and 2 inches (5.1 cm). PVC splice couplings are held in a sea turtle's mouth with the needle-nose pliers.

(g) *A large avian oral speculum.* The avian oral speculum must be 9 inches (22.9 cm) long, and constructed of 3/16 inch (4.8-mm) wire diameter 304 stainless steel. The wire must be covered with 8 inches (20.3 cm) of clear vinyl tubing (5/16 inch (7.9-mm) outside diameter, 3/16 inch (4.8-mm) inside diameter), friction tape, or similar to pad the surface.

B. *Sea turtle handling requirements.* Any sea turtle incidentally captured during fishing operations must be handled, and release gear must be used, in accordance with the NMFS careful handling, resuscitation, and release protocols as specified in this appendix, in the 2019 version of the NMFS document titled, ''Careful Release Protocols for Sea Turtle Release with Minimal Injury'', or on the NMFS sea turtle handling and release guidelines placard.

1. *Sea turtles brought on board.* When practicable, both active and inactive (comatose) sea turtles must be brought on board the vessel without causing further injury to the animal, using a net or hoist as specified in paragraph A.5. of this appendix. Release gear specified in paragraphs A.6. through A.12. of this appendix must be used to remove fishing gear from sea turtles. All sea turtles up to 3 ft (0.9 m) carapace (shell) length must be brought on board to remove fishing gear if sea conditions allow.

(a) Place a sea turtle upright on its bottom shell on a cushion or support device, as specified in paragraph A.6. of this appendix, to immobilize it and facilitate gear removal. Then, determine if the fishing gear can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the sea turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point of the hook is not clearly visible, or if it is determined that removal would result in further injury to the sea turtle.

(b) If a hook cannot be removed, remove as much line as possible from the sea turtle and the hook using monofilament cutters as specified in paragraph A.11. of this appendix, and as much of the hook as possible should be removed before releasing the sea turtle, using bolt cutters as specified in paragraph A.10. of this appendix.

(c) If a hook can be removed, an effective technique may be to cut off the barb or the eye of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the mouth, a mouth opener or mouth gag, as specified in paragraph A.12. of this appendix, may facilitate opening the sea turtle's mouth and keeping the mouth open. Short-handled dehookers for internal hooks, or long-nose or needle-nose pliers, as specified in paragraphs A.7. and A.8. of this appendix, respectively, should be used to remove visible hooks from the mouth that have not been swallowed on boated sea turtles, as appropriate.

(d) If a sea turtle appears comatose or inactive, follow the NMFS resuscitation protocols to attempt revival before its release. As much gear as possible must be removed from the sea turtle without causing further injury prior to its release.

(e) *Sea turtle resuscitation.* Resuscitation must be attempted on any sea turtle that is comatose or appears inactive by the following methods:

(i) Place the sea turtle upright on its bottom shell and elevate its hindquarters at least 6 inches (15.2 cm) to drain any water from the sea turtle for a period of at least 4 hours and up to 24 hours. The amount of the elevation depends on the size of the sea turtle; greater elevations are needed for larger sea turtles.

(ii) Periodically rock the sea turtle gently from left to right by holding the outer edge of the shell (carapace) and lift one side about 3 inches (7.6 cm), and then alternate to the other side.

(iii) The sea turtle being resuscitated must be shaded and kept damp or moist. Do not put the sea turtle into a container holding water. A water-soaked towel placed over the head, shell, and flippers is the most effective method to keep a sea turtle moist.

(iv) Gently touch the corner of the eye and pinch the tail (reflex test) periodically to see if there is a response indicating the sea turtle may be recovering.

(f) *Sea turtle release.* A sea turtle that is actively moving or determined to be dead as described in paragraph B.1.(g) of this appendix must be released. Release the sea turtle when fishing gear is not in use to avoid recapturing the sea turtle. Place the engine gear in neutral position, and then lower the sea turtle into the water from a low part on the vessel, in an area where the sea turtle is

unlikely to be recaptured or injured by vessels.

(g) A sea turtle is determined to be dead if the muscles are stiff (*rigor mortis*) and/or the flesh has begun to rot; otherwise the sea turtle is determined to be comatose or inactive, and resuscitation attempts are necessary as specified in paragraph B.1.(e).

(h) A sea turtle that fails to respond to the reflex test or fails to move within 4 hours (up to 24 hours if possible) must be returned to the water in the same manner as that for an actively moving sea turtle.

2. *Sea turtles that cannot be brought on board.* If a sea turtle is too large, or is hooked or entangled in a manner that prevents bringing the sea turtle on board safely and without causing further injury, release gear specified in paragraph A. of this appendix must be used to remove the maximum amount of fishing gear from the sea turtle, or to remove as much line as possible from the sea turtle or from a hook that cannot be removed prior to releasing the sea turtle.

(a) A non-boated sea turtle should be brought close to the boat. Then, determine whether the hook can be removed without causing further injury to the sea turtle. All externally embedded hooks should be removed, unless hook removal would result in further injury to the sea turtle. No attempt should be made to remove a hook if it has been swallowed and the insertion point is not clearly visible, or if it is determined that removal would result in further injury.

(b) If the hook cannot be removed or if the sea turtle is only entangled, remove as much line as possible prior to its release using a long-handled line cutter or monofilament line cutters specified in paragraphs A.1. and A.11. of this appendix.

(c) If the hook can be removed, it must be removed using the appropriate dehooker or other hook removal device specified in paragraph A. of this appendix. Without causing further injury, as much gear as possible must be removed from the sea turtle prior to its release.

(3) Any sea turtle taken incidentally while fishing, regardless of whether the sea turtle is alive or dead, or whether it is brought on board, must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

C. *Incorporation by reference.* The standards required in paragraphs A. and B. of this appendix are incorporated by reference into this appendix with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the National Marine Fisheries Service, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701, phone: 727–824–5301, website: *https://www.fisheries.noaa.gov/southeast/endangered-species-conservation/sea-turtle-and-smalltooth-sawfish-release-gear-protocols,* and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

1. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149.

(a) Careful Release Protocols for Sea Turtle Release with Minimal Injury, NOAA Technical Memorandum NMFS–SEFSC–735, Stokes, L., and Bergmann, C. (Editors), 2019.

(b) [Reserved]

2. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701.

(a) Sea Turtle Handling/Release Guidelines: Quick Reference for Hook and Line Fisheries, English, Spanish, Vietnamese, Revised April 2019.

(b) [Reserved]

[FR Doc. 2019–19899 Filed 9–16–19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 190909–0024]**

**RIN 0648–BI77**

## Fisheries of the Northeastern United States; Habitat Clam Dredge Exemption Framework

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement the New England Fishery Management Council's Habitat Clam Dredge Exemption Framework Adjustment to its Fishery Management Plans. The proposed action is intended to establish areas within the Great South Channel Habitat Management Area where vessels could fish for Atlantic surfclams or mussels with dredge gear, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Omnibus Habitat Amendment 2. This action is necessary in order for the fishing industry to access part of the surfclam and mussel resource within the Habitat Management Area.

**DATES:** Comments must be received by October 17, 2019.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2019–0043, by either of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-;NMFS-2019-0043,*

2. Click the ''Comment Now!'' icon, complete the required fields

3. Enter or attach your comments.

-OR-

*Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on the Proposed Rule for Habitat Clam Dredge Exemption Framework.''

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport,

MA 01950. These documents are also accessible via the internet at *www.nefmc.org*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, 978–281–9341.

**SUPPLEMENTARY INFORMATION:**

## Background

The Great South Channel Habitat Management Area (GSC HMA) was created by the final rule to implement the New England Fishery Management Council's Omnibus Habitat Amendment 2 (OHA2) (83 FR 15240; April 9, 2018), which prohibited the use of all mobile bottom-tending fishing gear in the GSC HMA. The GSC HMA contains complex benthic habitat that is important for juvenile cod and other fish species, and it is susceptible to the adverse impacts of fishing gear. The OHA2 included a 1-year delay of the GSC HMA closure that allowed the surfclam fishery to continue fishing with hydraulic clam dredges in the GSC HMA. This delay was intended to give the Council time to determine if a long-term exemption is warranted. The 1-year delay ended on April 9, 2019, and the GSC HMA is now closed to all mobile bottom-tending fishing gear.

The Council initiated the Habitat Clam Dredge Exemption Framework Adjustment in 2015 as a following action to OHA2. Development of the framework was guided by a problem statement approved by the Council in October 2015:

> The Council intends through this action to identify areas within the Great South Channel and Georges Shoal Habitat Management Areas that are currently fished or contain high energy sand and gravel that could be suitable for a hydraulic clam dredging exemption that balances achieving optimum yield for the surfclam/ocean quahog fishery with the requirement to minimize adverse fishing effects on habitat to the extent practicable and is consistent with the underlying objectives of [OHA2].

In the final stages of OHA2 development, the Council was also approached by parties interested in developing a mussel dredge fishery in the GSC HMA. Currently there is no Federal mussel fishery management plan.

The Georges Shoal HMA was disapproved by NMFS, and the framework became solely focused on the GSC HMA. Development of the Habitat Clam Dredge Exemption Framework occurred over several meetings of Council's Habitat Plan Development Team, with input from the Council's Habitat Committee and the full Council. While the primary focus of the framework was an exemption for the existing surfclam fishery, most of the alternatives considered could be implemented with or without the exemption applying to the mussel fishery as well. The Council took final action at its December 2018 meeting selecting preferred alternatives and approving the action for submission to NMFS. This rule proposes management measures necessary to implement the Framework.

## Proposed Measures

This action would establish three dredge exemption areas (McBlair, Old South, and Fishing Rip) within the GSC HMA where a vessel could potentially fish for surfclams or blue mussels. Tables 1 through 3 contain the coordinates for the proposed exemption areas and are illustrated in Figure 1. Each area would be defined by the following points connected in the order listed by straight lines.

TABLE 1—COORDINATES FOR MCBLAIR DREDGE EXEMPTION AREA

| Point | Longitude | Latitude |
|---|---|---|
| 1 | 69° 49.255′ W | 41° 25.878′ N |
| 2 | 69° 46.951′ W | 41° 25.878′ N |
| 3 | 69° 46.951′ W | 41° 19.34′ N |
| 4 | 69° 49.187′ W | 41° 19.34′ N |
| 1 | 69° 49.255′ W | 41° 25.878′ N |

TABLE 2—COORDINATES FOR OLD SOUTH DREDGE EXEMPTION AREA

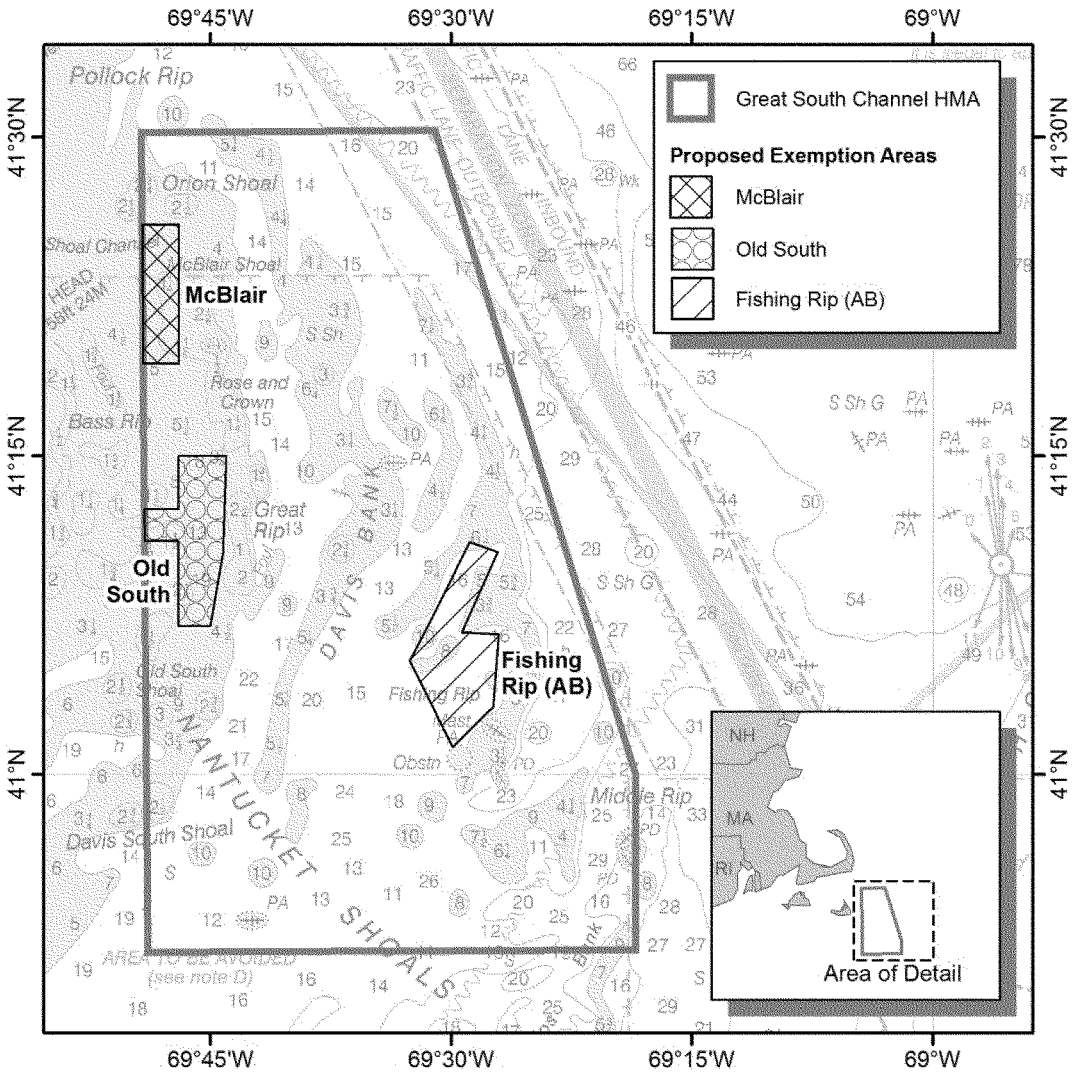
| Point | Longitude | Latitude |
|---|---|---|
| 1 | 69° 47′ W | 41° 15′ N |
| 2 | 69° 44′ W | 41° 15′ N |
| 3 | 69° 44.22′ W | 41° 10.432′ N |
| 4 | 69° 45′ W | 41° 7′ N |
| 5 | 69° 47′ W | 41° 7′ N |
| 6 | 69° 47′ W | 41° 11′ N |
| 7 | 69° 49.101′ W | 41° 11′ N |
| 8 | 69° 49.116′ W | 41° 12.5′ N |
| 9 | 69° 47′ W | 41° 12.5′ N |
| 1 | 69° 47′ W | 41° 15′ N |

TABLE 3—COORDINATES FOR FISHING RIP DREDGE EXEMPTION AREA

| Point | Longitude | Latitude |
|---|---|---|
| 1 | 69° 28.829′ W | 41° 10.963′ N |
| 2 | 69° 27.106′ W | 41° 10.485′ N |
| 3 | 69° 29.311′ W | 41° 6.699′ N |
| 4 | 69° 27.034′ W | 41° 6.609′ N |
| 5 | 69° 27.376′ W | 41° 3.198′ N |
| 6 | 69° 29.905′ W | 41° 1.297′ N |
| 7 | 69° 32.579′ W | 41° 5.368′ N |
| 8 | 69° 31.193′ W | 41° 7.356′ N |
| 1 | 69° 28.829′ W | 41° 10.963′ N |

These exemption areas were chosen to allow limited access to some historical surfclam fishing grounds while protecting the majority of the HMA. The three exemption areas total only 6.9 percent of the total area of the HMA and do not include the areas most clearly identified as containing complex and vulnerable habitats. Because of the small area being considered for this exemption, this action would not affect the overall conservation benefit of the HMA. The McBlair and Fishing Rip Dredge Exemption Areas would be open to fishing for surfclams or mussels year round. The Old South Dredge Exemption Area would be closed to all mobile bottom-tending gear from November 1 through April 30 and open for surfclam or mussel fishing from May 1 through October 31 each year. The Old South Dredge Exemption Area overlaps with an area identified in OHA2 as a historical cod spawning area. The annual closure from November through April is meant to avoid times when cod are expected to spawn and to reduce the potential for dredge fishing to disturb spawning aggregations of cod.

**Figure 1 -- Map of Proposed Exemption Areas**




In addition to the proposed exemption areas of McBlair, Old South, and Fishing Rip, the Council tasked its Habitat Plan Development Team to work with the surfclam industry to develop a prioritized list of research needs concerning two other areas of the HMA (Rose and Crown and Davis Bank East). The intent of the Council was to develop an exempted fishing permit program for these areas that could support the potential development of additional exemptions in the future. Industry members have been working with research organizations on potential exempted fishing permits (EFP) to conduct research in these areas. Requests for EFPs will be evaluated consistent with our normal practice and are separate from this rulemaking.

To facilitate enforcement of the small exemption areas, participating vessels would be required to obtain a letter of authorization (LOA) from the NMFS Regional Administrator. Similar LOAs are used to grant access to specific areas or programs in other fisheries and may be applied for using a common form available from NMFS' Greater Atlantic Regional Fisheries Office (GARFO). If a vessel violates any of the requirements of the exemption areas, the LOA may be canceled, prohibiting future access to the GSC HMA.

To receive the LOA, a vessel must hold a Federal commercial surfclam permit, which comes with requirements including reporting each fishing trip, using a vessel monitoring system (VMS), and selling catch exclusively to a federally permitted dealer. The LOA would require the vessel have a NMFS-approved VMS unit that can automatically adjust the frequency of position information sent to NMFS. A list of qualifying VMS units is available from GARFO. While within the GSC HMA, vessels would be subject to an increased VMS position polling rate from once per hour to once every 5 minutes. This would provide finer scale resolution on the location of the vessel and allow NMFS to monitor compliance with the small exemption areas. The increased polling rate would begin automatically as the vessel approaches the GSC HMA and would continue until after the vessel leaves the area. Vessels fishing in the GSC HMA would be required to use new VMS trip declaration codes that would allow law enforcement to know they intend to fish in the GSC HMA for surfclams or blue mussels.

Vessels fishing for surfclams within the GSC HMA would still be subject to

the requirements of the individual transferable quota system and other provisions of the surfclam regulations. This includes restrictions on retention of other species of fish caught incidentally while using hydraulic clam dredge gear, which are typically determined by the other Federal fishing permits the vessel holds.

To fish for mussels in the GSC HMA, a vessel would be required to hold a surfclam vessel permit. This permit can be obtained from GARFO. By holding a surfclam permit, mussel fishing vessels in the GSC HMA would be subject to permit reporting and monitoring requirements that would not normally apply to vessels fishing for mussels in Federal waters. Mussel fishing vessels would also need to obtain the new LOA and use the VMS trip declaration code for any trip in the GSC HMA. Vessels would be required to use a non-hydraulic mussel dredges (also called a dry dredge), which could not exceed 8 ft (2.4 m) in width. Vessels fishing for mussels could not fish for, harvest, or land any species of fish other than blue mussels. Any violation of permit, reporting, monitoring, or LOA requirements for fishing in the GSC HMA could result in NMFS revoking the vessel's LOA, which would prevent further fishing by that vessel in the HMA.

Pursuant to section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council has deemed that this proposed rule is necessary and appropriate for the purpose of implementing the Habitat Clam Dredge Exemption Framework Adjustment, with the exception of the measure noted below as proposed under the Secretary's authority under section 305(d) of the Magnuson-Stevens Act. Under the Magnuson-Stevens Act, we are required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The Magnuson-Stevens Act permits us to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. We are seeking comment on the Council's proposed measures in the Habitat Clam Dredge Exemption Framework Adjustment and whether they are consistent with the Council's FMPs and the OHA2, the Magnuson-Stevens Act and its National Standards, and other applicable law.

**Clarification**

This action also proposes a minor modification to the regulations under authority granted the Secretary under section 305(d) of the Magnuson-Stevens Act to ensure that Fishery Management Plans (FMP) are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action proposes to define a ''straight line'' with regard to regulated areas, as a rhumb line, unless explicitly stated otherwise. When fishery managers develop regulated areas (*e.g.,* scallop access areas or Northeast multispecies closed areas), the areas are defined by a series of points of latitude and longitude connected by straight lines when drawn on a standard nautical chart. Nautical charts use a Mercator projection so straight lines drawn on a chart are lines of constant compass bearing, also known as rhumb lines. To make the regulations as unambiguous as possible, we propose to add this definition and invite the public to comment on this proposal.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the New England Council's FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. The EA includes an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section and in the preamble to this proposed rule. A summary of the RFA analysis follows. A copy of the detailed RFA analysis is available from the Council (see **ADDRESSES**).

*Description of the Reasons Why Action Is Being Considered*

This action proposes management measures to allow fishing with dredge gear for Atlantic surfclams or blue mussels in three exemption areas within the Great South Channel HMA. The measures seek to minimize to the extent practicable the adverse effects on complex habitat within the HMA by fishing for surfclams and mussels in the area.

*Statement of the Objectives of, and Legal Basis for, This Proposed Rule*

This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648. A complete description of the action, why it is being considered, and the legal basis for this action are contained in the Clam Dredge Exemption Framework document, and elsewhere in the preamble to this proposed rule, and are not repeated here.

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

This proposed rule affects small entities engaged in commercial fishing operations in the Federal waters off Southern New England, Georges Bank, and the Gulf of Maine, and permitted to fish for either surfclams or mussels. In 2017, eight large commercial fishing businesses and 377 small commercial fishing businesses held either a surfclam or ocean quahog federal permit. The number of fishermen actively engaged in the surfclam and ocean quahog fishery is much smaller than the number of individuals permitted for those two fisheries. This is because there is an individual transferrable quota associated with both species, meaning only individuals holding or leasing quota can land surfclam and ocean quahog. Over the last 3 years, the number of businesses that have been active in the areas proposed for exemption areas has been between 10 (8 small and 2 large) and 12 (10 small and 2 large).

Between 10 (2015) and 11 (2016, 2017) vessels were permitted and active in the Massachusetts mussel fishery in the most recent 3-year period, although only one or two are expected to fish in the HMA. The current status of the mussel fishery in the Great South Channel is exploratory, and ownership data is not available from which to assess business size for state-permitted vessels. This situation precludes a more thorough investigation into the number and size of mussel businesses regulated under the Clam Dredge Framework.

Small businesses have historically generated a higher percentage of their revenue within the Great South Channel HMA and are expected to benefit more from any exemption than large businesses, relatively speaking.

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule*

This action would require an annual letter of authorization for fishermen accessing the Great South Channel HMA exemption areas and each trip into the exemption areas would require vessels use a new Vessel Monitoring System (VMS) trip declaration code and be subject to additional position polling when inside the HMA.

*Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule*

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

This action proposes a set of three discrete exemption areas within the GSC HMA where dredge fishing for surfclams and mussels would be allowed. The Council considered three other options. The Council also evaluated taking no action thereby keeping the entire GSC HMA closed to dredge fishing for surfclams and blue mussels. All of the action alternatives would result in some level of increased revenue for vessels fishing in the exemption areas. While this action does not affect the overall quota for surfclams, the catch rate in the exemption areas is potentially higher than in other open areas. Therefore, the opening of these areas may not affect the total harvest of surfclams, but may improve the efficiency with which part of the quota is harvested. Moreover, within the affected entities, some may have had a disproportionate historic harvest from areas now closed to hydraulic dredges in the GSC HMA. In choosing a preferred alternative, the Council considered the tradeoffs between short-term economic benefit to the surfclam and mussel industries and potential long-term benefit to other fisheries through the protection of essential fish habitat from the adverse impacts of fishing gear.

This proposed rule contains an addition to a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0202. Public reporting burden for obtaining a letter of authorization to fish within the GSC HMA is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. The public reporting burden for increasing the VMS location data from once per hour to once every five minutes is estimated to cost participating fishermen $0.84 per hour while a vessel is within 3 nm (5.6 km) of the HMA and subject to the higher position polling rate. Based on historical fishing effort, this would translate to an average annual cost of $8,639 spread across all vessels active in the HMA.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Greater Atlantic Regional Fisheries Office at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 9, 2019.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.2, add, in alphabetical order, a definition for ''Straight line.''

**§ 648.2 Definitions.**

* * * * *

*Straight line,* with regard to regulated areas, means a rhumb line, unless explicitly stated otherwise.

* * * * *

■ 3. In 648.370, revise paragraph (h)(2) to read as follows:

**§ 648.370 Habitat Management Areas.**

* * * * *

(h) * * *

(2) *Atlantic Surfclam and Mussel Dredge Exemption Areas.* (i) *Dredge Exemption Area Requirements.* A vessel may fish in one or more of the Dredge Exemption Areas below, provided the area is open and the vessel meets the following requirements:

(A) Holds a federal Atlantic surfclam vessel permit.

(B) Has been issued a Letter of Authorization to fish in the Great South Channel HMA from the Regional Administrator.

(C) Has a NMFS-approved VMS unit capable of automatically transmitting a signal indicating the vessel's accurate position at least once every 5 minutes while in or near the Great South Channel HMA.

(D) Declares each trip into the HMA through the VMS and fishes exclusively inside HMA dredge exemption areas on such trips.

(E) When fishing for surfclams in an HMA exemption area, uses only hydraulic clam dredge gear.

(F) When fishing for mussels in an HMA exemption area, any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not possess, or land any species of fish other than blue mussels.

(ii) *McBlair Dredge Exemption Area.* (A) The McBlair Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

MCBLAIR DREDGE EXEMPTION AREA

| Point | Longitude | Latitude |
|---|---|---|
| 1 | 69° 49.255′ W | 41° 25.878′ N |
| 2 | 69° 46.951′ W | 41° 25.878′ N |
| 3 | 69° 46.951′ W | 41° 19.34′ N |
| 4 | 69° 49.187′ W | 41° 19.34′ N |
| 1 | 69° 49.255′ W | 41° 25.878′ N |

(B) The McBlair Dredge Exemption Area is open year-round.

(iii) *Old South Dredge Exemption Area.* (A) The Old South Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

OLD SOUTH DREDGE EXEMPTION AREA

| Point | Longitude | Latitude |
|---|---|---|
| 1 | 69° 47′ W | 41° 15′ N |
| 2 | 69° 44′ W | 41° 15′ N |
| 3 | 69° 44.22′ W | 41° 10.432′ N |
| 4 | 69° 45′ W | 41° 7′ N |
| 5 | 69° 47′ W | 41° 7′ N |
| 6 | 69° 47′ W | 41° 11′ N |
| 7 | 69° 49.101′ W | 41° 11′ N |
| 8 | 69° 49.116′ W | 41° 12.5′ N |
| 9 | 69° 47′ W | 41° 12.5′ N |
| 1 | 69° 47′ W | 41° 15′ N |

(B) The Old South Dredge Exemption Area is open from May 1–October 31, and closed to all mobile bottom-tending gear November 1–April 30.

(iv) *Fishing Rip Dredge Exemption Area.* (A) The Fishing Rip Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

FISHING RIP DREDGE EXEMPTION AREA

| Point | Longitude | Latitude |
|---|---|---|
| 1 | 69° 28.829′ W | 41° 10.963′ N |
| 2 | 69° 27.106′ W | 41° 10.485′ N |
| 3 | 69° 29.311′ W | 41° 6.699′ N |
| 4 | 69° 27.034′ W | 41° 6.609′ N |
| 5 | 69° 27.376′ W | 41° 3.198′ N |
| 6 | 69° 29.905′ W | 41° 1.297′ N |
| 7 | 69° 32.579′ W | 41° 5.368′ N |
| 8 | 69° 31.193′ W | 41° 7.356′ N |
| 1 | 69° 28.829′ W | 41° 10.963′ N |

(B) The Fishing Rip Dredge Exemption Area is open year-round.

* * * * *

[FR Doc. 2019–19815 Filed 9–16–19; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 84, No. 180
Tuesday, September 17, 2019

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

September 12, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 17, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food Safety and Inspection Service

*Title:* In-Home Food Safety Behaviors and Consumer Education: Web Survey.

*OMB Control Number:* 0583–New.

*Summary of Collection:* The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary of Agriculture (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 453, *et seq.,* 601 et. seq.) FSIS protects the public by verifying that meat, poultry, and processed egg products are wholesome; not adulterated; and properly marked, labeled, and packaged. USDA FSIS' Office of Public Affairs and Consumer Education (OPACE) ensures that all segments of the farm-to-table chain receive valuable food safety information. The consumer education programs developed by OPACE's inform the public on how to safely handle, prepare, and store meat, poultry, and processed egg products to minimize incidence or foodborne illness. As part of OPACE's ongoing activities to develop and evaluate its public health education and communication activities, FSIS is requesting approval for a new information collection to conduct web-based surveys of consumers.

*Need and Use of the Information:* Finding from the web surveys will provide information on how FSIS communication programs and materials affect consumer understanding of recommended safe food handling practices and insight into how to effectively inform consumers of recommended practices.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 9,909.

*Frequency of Responses:* Reporting: Other (every other year).

*Total Burden Hours:* 1,956.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2019–20042 Filed 9–16–19; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2008–0142]**

### Notice of Availability of an Environmental Assessment and Finding of No Significant Impact for the Biological Control of Yellow Starthistle

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** We are advising the public that we have prepared a final environmental assessment and finding of no significant impact relative to the release of *Ceratapion basicorne* for the biological control of yellow starthistle, *Centaurea solstitialis* (Asteraceae), in the continental United States. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

**FOR FURTHER INFORMATION CONTACT:** Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2327; email: *Colin.Stewart@usda.gov*.

**SUPPLEMENTARY INFORMATION:** Yellow starthistle is a highly invasive weed that has become one of California's worst pests since its introduction prior to 1860. Since then, it has been reported in 41 of the 48 contiguous U.S. States, with the heaviest infestations in the States of California, Idaho, Oregon, and Washington. Yellow starthistle infests grassland habitats and displaces desirable plants in both natural and grazing areas. Its flowers have inch-long spines that deter feeding by and cause injury to grazing animals and lower the utility of recreational lands.

On March 10, 2009, we published in the **Federal Register** (74 FR 10224–10225, Docket No. APHIS–2008–0142) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts

[1] To view the notice, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0142*.

associated with the release of *Ceratapion basicorne* for the biological control of yellow starthistle, *Centaurea solstitialis* (Asteraceae), in the continental United States.

We solicited comments on the EA for 30 days ending April 9, 2009. We received one comment by that date. Our response to the comment is included in the final EA.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *C. basicorne* for the biological control of yellow starthistle in the continental United States. The finding, which is based on the EA, reflects our determination that release of *C. basicorne* will not have a significant impact on the quality of the human environment. Concurrent with this announcement, we will issue a permit for the release of *C. basicorne* for the biological control of yellow starthistle.

The EA and FONSI may be viewed on the *Regulations.gov* website (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 11th day of September 2019.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2019–20097 Filed 9–16–19; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Library

### Notice of Intent To Seek Approval To Collect Information

**AGENCY:** National Agricultural Library, Agricultural Research Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the National Agricultural Library's (NAL) intent to request renewal of an information collection to obtain an evaluation of user satisfaction with NAL internet sites.

**DATES:** Comments on this notice must be received by November 18, 2019 to be assured of consideration.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Email: Ricardo.S.Romero@usda.gov.*
- *Fax:* 301–504–7042 attention Ricardo Romero.
- *Mail/Hand Delivery/Courier:* National Agricultural Library,10301 Baltimore Avenue, Room 115–B, Beltsville, Maryland 20705–2351.

**FOR FURTHER INFORMATION CONTACT:** Ricardo Romero at 301–504–5066.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Evaluation of User Satisfaction with NAL Internet Sites.''

*OMB Number:* 0518–0040.

*Expiration Date:* N/A.

*Type of Request:* Approval for renewed data collection.

*Abstract:* This is a request, made by NAL Office of the Director Office of the Associate Director of Information Services, that the OMB approve, under the Paperwork Reduction Act of 1995, a 3-year generic clearance for the NAL to conduct user satisfaction research around its internet sites. This effort is made according to Executive Order 12862, which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

The NAL internet sites are a vast collection of web pages. NAL web pages are visited by an average of 8.6 million people per month. All NAL Information Centers have an established web presence that provides information to their respective audiences.

*Description of Surveys:* The online surveys will be no more than 15 Semantic Differential Scale or multiple-choice questions, and no more than four open-ended response questions.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 8 minutes per survey.

*Respondents:* The agricultural community, USDA personnel and their cooperators, and including public and private users or providers of agricultural information.

*Estimated Number of Respondents:* 1,000 per year.

*Estimated Total Annual Burden on Respondents:* 80 hours.

*Comments:* The purpose of the research is to ensure that intended audiences find the information provided on the internet sites easy to access, clear, informative, and useful. Specifically, the research will examine whether the information is presented in an appropriate technological format and whether it meets the needs of users of these internet sites. The research will also provide a means by which to classify visitors to the NAL internet sites, to better understand how to serve them. It is estimated that participants will require no more than 5 minutes to complete each survey. Actual time required will vary based on participant reading rate.

Sample questions may include the following:

| | |
|---|---|
| | Please rate the accuracy of information on this site. |
| | Please rate the quality of information on this site. |
| | Please rate the freshness of content on this site. |
| Functionality | Please rate the usefulness of the information provided on this site. |
| | Please rate the convenience of the information on this site. |
| | Please rate the ability to accomplish what you wanted to on this site. |
| Look and Feel | Please rate the ease of reading this site. |
| | Please rate the clarity of site organization. |
| | Please rate the clean layout of this site. |
| Navigation | Please rate the degree to which the number of steps it took to get where you want is acceptable. |
| | Please rate the ability to find information you want on this site. |

Comments should be sent to the address in the preamble.

Dated: September 4, 2019.

**Simon Y. Liu,**

*Associate Administrator, ARS.*

[FR Doc. 2019–20094 Filed 9–16–19; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Economic Analysis (BEA), Commerce.

*Title:* Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate.

*OMB Control Number:* 0608–0004.

*Form Number:* BE–577.

*Type of Request:* Regular submission.

*Number of Respondents:* 3,000 U.S. parents filing for 20,800 foreign affiliates per quarter, 83,200 annually.

*Average Hours per Response:* 1 hour is the average but may vary considerably among respondents because of differences in company structure and complexity.

*Estimated Total Annual Burden Hours:* 83,200.

*Needs and Uses:* The Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (Form BE–577), obtains quarterly data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. The survey is a sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive universe estimates in non-benchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is conducted every five years. The data are used in the preparation of the U.S. international transactions accounts, the national income and product accounts, the input-output accounts, and the international investment position of the United States. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

The data from the survey are primarily intended as general purpose statistics. They should be readily available to answer any number of research and policy questions related to U.S. direct investment abroad.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* Quarterly.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202)395–5806.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–20021 Filed 9–16–19; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–805]**

### Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017–2018

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

**SUMMARY:** The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. The period of review (POR) is November 1, 2017 through October 31, 2018. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable September 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner, 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) 482–6312.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 29, 2019, Commerce published in the **Federal Register** a notice of the initiation of the administrative review of the antidumping duty (AD) order [1] on certain circular welded non-alloy steel pipe from Mexico for 37 companies.[2] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice.

On May 7, 2019, all requests for administrative review were timely withdrawn with regard to 34 companies (listed in Appendix II to this notice), leaving only Conduit, S.A. de C.V. (Conduit), Mueller Comercial de Mexico, S. de R.L. de C.V. (Mueller), and RYMCO subject to the administrative review.[4] On June 28, 2019, we received a timely filed certification of no shipments of subject merchandise from Mueller.[5] On July 8, 2019, we received a timely filed certification of no shipments of subject

[1] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019) (containing a correction to the listing of the names in the *Initiation Notice*).

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Circular Welded Non-Alloy Steel Pipe from Mexico: 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Petitioner's, ''Certain Circular Welded Non-Alloy Steel Pipes and Tubes from Mexico: Partial Withdrawal of Request for Administrative Review,'' dated May 7, 2019; *see also* Domestic Interested Parties' Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Partial Withdrawal of Request for Administrative Review,'' dated May 7, 2019.

[5] *See* Mueller's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Mueller Certification of No Shipments,'' dated June 28, 2019 (Mueller Statement of No Shipments).

merchandise from Conduit and RYMCO in lieu of a questionnaire response.[6]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[7] The revised deadline for the preliminary results is September 11, 2019.

**Scope of the Order**

The merchandise under review is circular welded non-alloy steel pipes and tubes. The merchandise covered by the *Order* and subject to this review is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results of review, *see* the Preliminary Decision Memorandum.

**Preliminary Determination of No Shipments**

Prior to the issuance of the questionnaire, Conduit reported that it made no sales of subject merchandise during the POR.[8] On May 8, 2019, we placed the U.S. Customs and Border Protection (CBP) port inquiry instructions on the record that we sent to CBP regarding each company that submitted a statement of no shipments. We received no information from CBP contrary to the statements of no shipments from the companies contained in the attachments to the CBP Information Memorandum.[9]

On July 8, 2019, we received a certification of no shipments of subject merchandise from Conduit and RYMCO which contained documentation supporting their contentions that they had no prior knowledge of subject merchandise exported to the United States during the POR, and that the products listed in the CBP data were not subject merchandise in any case.[10] Based on this evidence, we preliminarily determine that Conduit and RYMCO made no shipments of subject merchandise into the United States during the POR.

As stated above, we received a certification of no shipments of subject merchandise from Mueller which contained documentation in support of its contention that it had no prior knowledge of the entry of products it had sold into the United States.[11] Based on this evidence, we preliminarily determine that Mueller made no shipments of subject merchandise into the United States during the POR. Therefore, based on the claims of no shipments by Mueller, and because the record currently contains no information to the contrary, we preliminarily determine that Conduit had no shipments of subject merchandise, and therefore no reviewable transactions, during the POR.

Consistent with our practice, we are not rescinding this review with respect to Conduit, RYMCO and Mueller, but we intend to complete the review of Conduit, RYMCO and Mueller and issue appropriate instructions to CBP based on the final results of this review. For a complete analysis of this statement of no shipments, *see* the Preliminary Decision Memorandum.[12]

**Rescission of Administrative Review, in Part**

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraw the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for administrative review were timely withdrawn for certain companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to 34 of the 37 companies named in the *Initiation Notice*.[13] *See* Appendix II for a list of these companies.

**Disclosure and Public Comment**

No calculations were performed for these preliminary results. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[14] Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.[15] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[17] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

**Assessment**

Upon issuing the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[18] In the case of changes in the methodology used in the final results from those in these preliminary results, if the respondent's weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of

[6] *See* Conduit/RYMCO's Letter, ''Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Conduit/RYMCO Response to Department Questionnaire—Statement of No Sales of Subject Merchandise,'' dated July 8, 2019 (Conduit/RYMCO Statement of No Shipments).

[7] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[8] *See* Conduit's Letter, ''Circular Welded Non-Alloy Steel Pipe from Mexico: Response to Comments on Notice of No Sales and Confirmation of No Sales, dated April 19, 2019. This statement included RYMCO.

[9] The port inquiries were for: Conduit, ITISA, Lamina y Placa, Mach 1 Aero, Mach 1 Global, Regiopytsa, Tubacero, and TUMEX.

[10] *See* Conduit/RYMCO Statement of No Shipments.

[11] *See* Mueller Statement of No Shipments.

[12] *See* Preliminary Decision Memorandum, at 6–8.

[13] *See Initiation Notice,* 84 FR at 2160–2161.

[14] *See* 19 CFR 351.309(c)(ii).

[15] *See* 19 CFR 351.309(d).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.212(b)(1).

this review, we intend to calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[19] If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[20] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

In the case of no change in the methodology used in the final results from these preliminary results, for entries of subject merchandise during the POR produced by Conduit, Mueller, or RYMCO for which that producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of certain circular welded non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Conduit, Mueller, and RYMCO, subject to this review, will be the rate established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 36.62 percent,[21] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

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

**Administrative Protective Orders**

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

**Notification to Interested Parties**

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: September 11, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Analysis
V. Conclusion

## Appendix II

**Companies for Which This Administrative Review Is Being Rescinded**

1. Abastecedora y Perfiles y Tubos, S.A. de C.V.
2. ArcelorMittal Tubular Products Monterrey, S.A. de C.V.
3. Arceros El Aguila y
4. Arco Metal, S.A. de C.V.
5. Burner Systems International De Mexico, S.A. de C.V.
6. fischer Mexicana Stainless Steel Tubing S.A. de C.V.
7. fischer Tubtech S.A. de C.V.
8. Fabricaciones Industriales Tumex, S.A. de C. V.
9. Forza Steel, S.A. de C.V.
10. Galvak, S.A. de C.V.
11. Impulsora Tlaxcalteca de Industrias, S.A. de C.V.
12. Industrias Monterrey S.A. de C.V.
13. La Metalica, S.A. de C.V
14. Lamina y Placa Comercial, S.A. de C.V.
15. Mach 1 Aero Servicios, S. de R.L. de C.V.
16. Mach 1 Global Services, Inc.
17. Maquilacero, S.A. de C.V.
18. Nacional de Acero, S.A. de C.V.
19. Nova Tube and Coil de Mexico, S. de R.L. de C.V.
20. Perfiles y Herrajes LM, S.A. de C.V.
21. Precitubo S.A. de C.V.
22. Productos Especializados de Acero, S.A. de C.V.
23. Productos Laminados de Monterrey, S.A. de C.V.
24. PYTCO, S.A. de C.V.
25. Regiomontana de Perfiles y Tubos, S.A. de C.V.
26. Servicios Swecomex, S.A. de C.V.
27. Talleres Acerorey, S.A. de C.V.
28. Ternium Mexico, S.A. de C.V.
29. Tubac, S.A. de C.V.
30. Tubacero S. de R.L. de C.V.
31. Tuberia Laguna, S.A. de C.V.
32. Tuberias Procarsa, S.A. de C.V.
33. Tubesa, S.A. de C.V.
34. Tubos Omega

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BILLING CODE 3510–DS–P

[19] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[20] *Id.,* 77 FR at 8102.

[21] *See Order.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–053, A–570–073, C–570–054, C–570–074]**

### Certain Aluminum Foil and Common Alloy Aluminum Sheet From the People's Republic of China: Notice of Initiation and Preliminary Determination of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews

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

**SUMMARY:** The Department of Commerce (Commerce) is initiating changed circumstances reviews (CCRs) and preliminarily determines that Shanghai Huafon Aluminium Corporation (Shanghai Huafon) is the successor-in-interest to Huafon Nikkei Aluminium Corporation (Huafon Nikkei) and, accordingly, that Shanghai Huafon should be assigned the cash deposit rates established for Huafon Nikkei for purposes of the antidumping duty (AD) and countervailing duty (CVD) orders on certain aluminum foil (aluminum foil) and common alloy aluminum sheet

(aluminum sheet) from the People's Republic of China (China).

**DATES:** Applicable September 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joshua A. DeMoss, 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) 482–3362.

**SUPPLEMENTARY INFORMATION:**

## Background

On April 19, 2018, Commerce published in the **Federal Register** the AD and CVD orders on aluminum foil from China, which included Huafon Nikkei.[1] Pursuant to the *Aluminum Foil Orders,* Commerce assigned Huafon Nikkei an AD cash deposit rate, adjusted for subsidy offset, of 73.66 percent, based on the non-selected respondent rate,[2] and the all-others subsidy rate of 18.62 percent.[3]

Commerce published in the **Federal Register** the AD and CVD orders on aluminum sheet from China on February 8, 2019 and February 6, 2019, respectively.[4] Pursuant to the *Aluminum Sheet Orders,* Commerce assigned Huafon Nikkei an AD cash deposit rate, adjusted for a subsidy offset, of 49.85 percent, based on the non-selected respondent rate,[5] and the all-others subsidy rate of 50.75 percent.[6]

On June 12, 2019, Shanghai Huafon informed Commerce that, as of September 25, 2018, Huafon Nikkei changed its name to ''Shanghai Huafon Aluminium Corporation.'' [7] Shanghai Huafon stated the change was in name only; all other former business operations remain unchanged.[8]

Shanghai Huafon requested that Commerce conduct CCRs and find that Shanghai Huafon is the successor-in-interest to Huafon Nikkei, and that it be subject to Huafon Nikkei's AD margins and CVD subsidy rates for aluminum foil and aluminum sheet, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b).[9] After finding Shanghai Huafon did not address the good cause requirement in its initial request pursuant to 19 CFR 351.216(c), Commerce issued a letter to Shanghai Huafon requesting it demonstrate good cause.[10] On July 8, 2019, Shanghai Huafon filed its response demonstrating good cause.[11] On July 17, 2019, Commerce extended the time period for determining whether to initiate and/or issue simultaneous preliminary determinations by 45 days, until September 10, 2019.[12] We did not receive comments from other interested parties concerning these requests.

## Scope of the Orders

### *Aluminum Foil Orders*

The merchandise covered by these orders is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. For a complete description of the scope, *see* the Preliminary Decision Memorandum.[13]

### *Aluminum Sheet Orders*

The merchandise covered by these orders is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. or a complete description of the scope, *see* the Preliminary Decision Memorandum.

## Initiation and Preliminary Determination of Changed Circumstances Reviews

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of a request from an interested party for a review of an AD or CVD order which shows changed circumstances sufficient to warrant a review of the order. In the past, Commerce has used CCRs to address the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff (successor-in-interest or successorship determinations).[14] The information submitted by Shanghai Huafon supporting its claim that it is the successor-in-interest to Huafon Nikkei demonstrates changed circumstances sufficient to warrant such a review.[15] Therefore, in accordance with 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating CCRs based on the information contained in Shanghai Huafon's submission.

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary determination if Commerce concludes that expedited action is warranted.[16] In the instant case, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and notice of preliminary determination. For a full description of the methodology underlying our analysis, *see* the Preliminary Decision Memorandum.

In accordance with 19 CFR 351.216, we preliminarily determine that Shanghai Huafon is the successor-in-interest to Huafon Nikkei. Record evidence, as submitted by Shanghai Huafon, indicates that, based on the totality of the circumstances under Commerce's successor-in-interest criteria, Shanghai Huafon's management

[1] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 83 FR 17362 (April 19, 2018) (*Aluminum Foil AD Order*); *see also Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 17360 (April 19, 2018) (*Aluminum Foil CVD Order*) (collectively, *Aluminum Foil Orders*).

[2] *See Aluminum Foil AD Order,* 83 FR at 17363.

[3] *See Aluminum Foil CVD Order,* 83 FR at 17361.

[4] *See Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019) (*Aluminum Sheet AD Order*); *see also Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order,* 84 FR 2157 (February 6, 2019) (*Aluminum Sheet CVD Order*) (collectively, *Aluminum Sheet Orders*).

[5] *See Aluminum Sheet AD Order,* 84 FR at 2814.

[6] *See Aluminum Sheet CVD Order,* 84 FR at 2158.

[7] *See* Shanghai Huafon's Letter, ''Aluminum Foil from the People's Republic of China: Request for Changed Circumstances Review,'' dated June 12, 2019; *see also* Shanghai Huafon's Letter, ''Common Alloy Aluminum Sheet from the People's Republic of China: Request for Changed Circumstances Review,'' dated June 12, 2019.

[8] *See* CCRs Requests at 2–3.

[9] *Id.*

[10] *See* Commerce's Letter, ''Antidumping/Countervailing Duty Investigations of Aluminum Foil and Sheet from China: Request for Changed Circumstances Review,'' dated July 1, 2019.

[11] *See* Shanghai Huafon's Letter, ''Aluminum Foil from the People's Republic of China and Common Alloy Aluminum Sheet from the People's Republic of China: Response to Request for Additional Information—Good Cause,'' dated July 8, 2019.

[12] *See* Commerce's Letter, ''*Changed Circumstances Reviews:* Extension of Initiation Deadline,'' dated July 17, 2019.

[13] *See* Memorandum, ''Initiation and Preliminary Determination of the Changed Circumstances Reviews Regarding Successor-In-Interest Analysis: Aluminum Foil/Common Alloy Aluminum Sheet from the People's Republic of China'' dated concurrently with this notice (Preliminary Decision Memorandum).

[14] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 82 FR 51605, 51606 (November 7, 2017), unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 82 FR 60177 (December 19, 2017).

[15] *See* 19 CFR 351.216(d).

[16] *See* 19 CFR 351.221(c)(3)(ii); *see also Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 33480–41 (June 12, 2015), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 80 FR 48807 (August 14, 2015).

and business relations are virtually identical to those of Huafon Nikkei before the name change with respect to the merchandise under review. Moreover, we preliminarily find that Shanghai Huafon's production facilities, supplier relationships, and customer base, with regard to the merchandise under review, are substantially the same as Huafon Nikkei before the name change. For the complete successor-in-interest analysis, *see* the Preliminary Decision Memorandum.

Therefore, based on record evidence, we preliminarily determine that Shanghai Huafon is the successor-in-interest to Huafon Nikkei and the AD margins and CVD subsidy rates assigned to Huafon Nikkei should be the rates for Shanghai Huafon as a result of our successor-in-interest finding.

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice in the **Federal Register**. In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All comments are to be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and must also be served on interested parties. ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.[17]

Consistent with 19 CFR 351.216(e), we intend to issue the final determination of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: September 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Orders
IV. Good Cause
V. Successor-In-Interest Determination
VI. Recommendation

[FR Doc. 2019–20082 Filed 9–16–19; 8:45 am]

**BILLING CODE 3510–DS–P**

[17] *See* 19 CFR 351.303(b).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–560–831]**

### Biodiesel From the Republic of Indonesia: Rescission of Countervailing Duty Administrative Review; 2017–2018

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

**SUMMARY:** The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on biodiesel from the Republic of Indonesia (Indonesia) for the period of review (POR) August 28, 2017, through December 31, 2018.

**DATES:** Applicable September 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC; telephone (202) 482–3586.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 8, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on biodiesel from Indonesia for the POR.[1] On February 28, 2019, the National Biodiesel Board Fair Trade Coalition (the National Biodiesel Coalition), a domestic interested party,[2] filed a timely request for review with respect to PT. Cermerlang Energi Perkasa (CEP); PT. Ciliandra Perkasa; PT. Musim Mas, Medan; PT. Pelita Agung Agrindustri; and Wilmar International Ltd. (collectively, the Companies Subject to Review), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[3] Pursuant to this request, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), on April 1, 2019, Commerce initiated an administrative review of the Companies Subject to Review.[4] On June 27, 2019, the National Biodiesel Coalition filed a timely withdrawal of its request for the administrative review of the Companies Subject to Review.[5]

## Rescission of Review

Pursuant to section 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, the National Biodiesel Coalition, the only party to file a request for review, withdrew its request for all parties for which a review was requested by the 90-day deadline. Accordingly, we are rescinding the administrative review of the CVD order on biodiesel from Indonesia for the period August 28, 2017, through December 31, 2018, in its entirety.

## Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess CVD duties on all appropriate entries of biodiesel from Indonesia. CVD duties shall be assessed at rates equal to the cash deposit of estimated CVD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816 (February 8, 2019).

[2] Members of the National Biodiesel Coalition include the National Biodiesel Board; American GreenFuels, LLC; Archer Daniels Midland Company; Ag Processing Inc.; Crimson Renewable Energy LP; High Plains Bioenergy; Integrity Biofuels, LLC; Iowa Renewable Energy, LLC; Lake Erie Biofuels (dba HERO BX); Minnesota Soybean Processors; New Leaf Biofuel, LLC; Newport Biodiesel, LLC; Renewable Biofuels, LLC; Renewable Energy Group, Inc.; Western Dubuque Biodiesel, LLC; Western Iowa Energy, LLC; and World Management Group, LLC (dba World Energy).

[3] *See* Letter from the National Biodiesel Coalition, ''Biodiesel from Indonesia: Request for Administrative Review of Countervailing Duty Order,'' dated February 28, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200 (April 1, 2019).

[5] *See* Letter from the National Biodiesel Coalition, ''Biodiesel from Indonesia: Withdrawal of Request for Administrative Review of the Countervailing Duty Order,'' dated June 27, 2019.

CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

**Notification to Importers**

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

**Notification Regarding Administrative Protective Orders**

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/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 violation which is subject to sanction.

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

Dated: September 11, 2019.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2019–20084 Filed 9–16–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–914, C–570–915]**

## Antidumping and Countervailing Duty Orders on Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

**SUMMARY:** The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in this case is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain finished components of refrigerated merchandising and display structures imported by Stein Industries Inc., d/b/a Carlson AirFlo Merchandising Systems (Carlson) are not within the scope of the antidumping (AD) and countervailing duty (CVD) orders on light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China).

**DATES:** Applicable June 28, 2019.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477.

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce issued the AD and CVD orders on LWRPT from China on August 5, 2008.[1] On May 29, 2018, in response to a scope ruling request filed by Carlson, Commerce issued its Final Scope Ruling, finding that certain finished components of refrigerated merchandising and display structures (part numbers R10447 and P0228321 and kit numbers 250172 and 250355) imported by Carlson are covered by the scope of the *Orders*.[2] Specifically, Commerce indicated that, ''{a}ll four parts in their original form, that pertain to this scope inquiry, possess the physical characteristics of subject merchandise that are described in the scope.'' [3] As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of Carlson's certain finished components of refrigerated merchandising and display structures.[4]

Carlson challenged Commerce's Final Scope Ruling with respect to merchandising bar part number R10447 and welded mounted bar kit number 250355 before the CIT. On March 5, 2019, the CIT remanded the Final Scope Ruling, holding that Commerce did not address certain arguments raised by Carlson based on the plain scope language and the sources identified under 19 CFR 351.225(k)(1).[5] The CIT remanded the Final Scope Ruling to Commerce for reconsideration.[6]

Pursuant to the CIT's *Remand Order,* on remand, Commerce reconsidered its Final Scope Ruling and determined that Carlson's certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) do not fall within the scope of the *Orders*.[7] Specifically, Commerce determined that the products do not exhibit a rectangular cross-section at the time of importation into the United States, as required by the scope of the *Orders*.[8] On June 18, 2019, the CIT sustained Commerce's Final Remand Results.[9]

**Timken Notice**

In its decision in *Timken,*[10] as clarified by *Diamond Sawblades,*[11] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's June 18, 2019, judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson pending expiration of the period of appeal or, if

[1] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45400 (August 5, 2008) and *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Countervailing Duty Order,* 73 FR 45405 (August 5, 2008) (*Orders*).

[2] *See* Memorandum, ''Final Scope Ruling on the Antidumping and Countervailing Duty Order on Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Carlson AirFlo Merchandising Systems Scope Ruling Request,'' dated May 29, 2018 (Final Scope Ruling).

[3] *Id.* at 7.

[4] *See* Message Numbers 8150312 and 8150311 dated May 30, 2018.

[5] *See Stein Industries Inc., D/B/A/Carlson AirFlo Merchandising Systems* v. *United States,* Court No. 18–00150, Slip Op. 19–29 (CIT March 5, 2019) (*Remand Order*).

[6] *Id.* at 14–17.

[7] *See* Final Results of Redetermination Pursuant to Court Remand, *Stein Industries Inc., D/B/A/ Carlson AirFlo Merchandising Systems* v. *United States,* Court No. 18–00150, Slip Op. 19–29 (CIT March 5, 2019), dated May 30, 2019 (Final Remand Results).

[8] *Id.* at 5–6.

[9] *See Stein Industries Inc., D/B/A/Carlson AirFlo Merchandising Systems* v. *United States,* Court No. 18–00150, Slip Op. 19–75 (CIT June 18, 2019).

[10] *See Timken Co.* v. *United States,* 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[11] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

appealed, pending a final and conclusive court decision.

**Amended Final Scope Ruling**

Because there is now a final court decision with respect to this case, Commerce is amending its final scope ruling and finds that the scope of the *Orders* do not cover certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson. Commerce will instruct CBP that the cash deposit rate will be zero percent for certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson without regard to antidumping duties, and to lift suspension of liquidation of such entries.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 516A(e)(1) of the Act.

Dated: September 11, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2019–20088 Filed 9–16–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Establishing an Advisory Council Pursuant to the National Marine Sanctuaries Act and Solicitation for Applications for the Proposed Lake Ontario National Marine Sanctuary Advisory Council

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of solicitation.

**SUMMARY:** Notice is hereby given that NOAA is establishing a national marine sanctuary advisory council for the proposed sanctuary in eastern Lake Ontario. The council will provide advice and recommendations to ONMS regarding the sanctuary's designation. ONMS is soliciting applications to fill seats on the Proposed Lake Ontario National Marine Sanctuary Advisory Council. This notice contains web page links and contact information for the Proposed Lake Ontario National Marine Sanctuary and application materials to apply for the newly established advisory council.

**DATES:** Applications for membership on the Proposed Lake Ontario Sanctuary Advisory Council need to be received by November 1, 2019.

**ADDRESSES:** For further information contact: Ellen Brody, Great Lakes Regional Coordinator, NOAA Office of National Marine Sanctuaries, 4840 South State Rd., Ann Arbor, MI 48108, or call 734–741–2270, or email *ellen.brody@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 315 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1445a) authorizes the Secretary of Commerce to establish advisory councils to advise and make recommendations regarding the designation and management of national marine sanctuaries. ONMS is establishing a new sanctuary advisory council for the proposed national marine sanctuary in Lake Ontario to serve as a liaison with the local community and provide guidance and advice to ONMS regarding the designation. The advisory council for the proposed sanctuary in Lake Ontario was not established when ONMS published its annual announcement in May 2019 that was advertising to fill vacant seats on the other 14 councils (84 FR 24758, May 29, 2019). Therefore, ONMS is adding the new advisory council to the list of sites with open vacancies and announcing that it is soliciting applications to fill the council's seats. Applications are due November 1, 2019.

**II. Office of National Marine Sanctuaries (ONMS)**

ONMS serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 14 national marine sanctuaries and the Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies.

One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. Advisory councils are community-based groups established to provide advice and recommendations to ONMS on issues including management and science, as well as to serve as liaisons between their constituents in the community and the site. Pursuant to Section 315(a) of the NMSA, advisory councils are exempt from the requirements of the Federal Advisory Committee Act. Additional information on ONMS and its advisory councils can be found at *http://sanctuaries.noaa.gov.*

**III. Advisory Council Membership**

Under Section 315 of the NMSA, advisory council members may be appointed from among: (1) Persons employed by federal or state agencies with expertise in natural resources management; (2) members of relevant regional fishery management councils; and (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources (16 U.S.C. 1445 a(b)).

The charter for each advisory council defines the number and type of seats and positions on the council. The advisory council charter for the proposed national marine sanctuary in eastern Lake Ontario identifies the following initial, non-governmental voting seat types: Divers/dive clubs/shipwreck exploration; education; maritime history and interpretation; tourism; economic development; recreational fishing; recreational boating; shoreline property owner; and citizen-at-large. Initially, the council will also have non-voting seats for government agencies. Input from federally recognized tribes will be received through direct government-to-government consultation, pursuant to NOAA's Policy on Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations (NAO 218–8, December 19, 2018).

For each of the existing advisory councils, applicants are chosen based upon their particular expertise and experience in relation to the seat for

which they are applying; community and professional affiliations; views regarding the protection and management of marine or Great Lakes resources; and possibly the length of residence in the area affected by the site. Council members and alternates for the Proposed Lake Ontario National Marine Sanctuary Advisory Council serve three-year terms, as reflected in the signed charter.

More information on advisory council membership and processes, and materials related to the purpose, policies, and operational requirements for advisory councils can be found in the charter for a particular advisory council (*http://sanctuaries.noaa.gov/management/ac/council_charters.html*) and the National Marine Sanctuary Advisory Council Implementation Handbook (*http://sanctuaries.noaa.gov/management/ac/acref.html*). For more information about the new advisory council for the proposed national marine sanctuary in Lake Ontario, including seat descriptions and application materials, please visit *https://sanctuaries.noaa.gov/lake-ontario/.*

*B. Paperwork Reduction Act*

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0397) for the collection of public information related to the processing of ONMS national marine sanctuary advisory council applications across the National Marine Sanctuary System. Establishing a sanctuary advisory council for the proposed sanctuary in Lake Ontario fits within the estimated reporting burden under that control number. See *https://www.reginfo.gov/public/do/PRASearch* (Enter Control Number 0648–0397). Therefore, ONMS will not request an update to the reporting burden certified for OMB control number 0648–0397.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to: Office of National Marine Sanctuaries, 1305 East West Highway, N/NMS, Silver Spring, Maryland 20910.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is #0648–0397.

**Authority:** 16 U.S.C. 1431 *et seq.*

**John Armor,**

*Director, Office of National Marine Sanctuaries.*

[FR Doc. 2019–20069 Filed 9–16–19; 8:45 am]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF591**

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Construction at Naval Weapons Station Seal Beach, California

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

**ACTION:** Notice; receipt of application for Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take small numbers of marine mammals incidental to conducting construction activities related to construction of an ammunition pier and turning basin at Naval Weapons Station Seal Beach, California, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than October 17, 2019.

**ADDRESSES:** Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the internet at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the Navy's application may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**Summary of Request**

On September 10, 2019, NMFS received an adequate and complete application from the Navy requesting authorization for take of marine mammals incidental to construction activities related to construction of an ammunition pier and turning basin at Naval Weapons Station Seal Beach, California. The requested regulations would be valid for five years, from 2020 through 2025. The Navy plans to conduct necessary work, including impact and vibratory pile driving, to demolish the old pier and construct a new one. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level B harassment only. Therefore, the Navy requests authorization to incidentally take marine mammals.

**Specified Activities**

Naval Weapons Station Seal Beach was commissioned in 1944 as a Naval Ammunition and Net Depot, and the existing wharf was rebuilt in 1953. This facility is the Navy's primary weapons station on the U.S. West Coast. The existing wharf is past its design life, not in compliance with modern earthquake codes, and presents safety and security concerns due to the proximity of naval munitions operations to civilian small boat traffic and the Pacific Coast Highway. Therefore, replacement of the wharf is planned, and is expected to require removal of approximately 100 piles and installation via impact hammer of approximately 900 new concrete piles. The work is expected to require approximately 474 days over the 5-year period. Bottlenose dolphins, harbor seals, California sea lions, and common dolphins have been observed in the area.

**Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: September 11, 2019.

**Catherine G. Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2019–20008 Filed 9–16–19; 8:45 am]

**BILLING CODE 3510–22–P**

## COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

### Senior Executive Service Performance Review Board Membership

**AGENCY:** Council of the Inspectors General on Integrity and Efficiency.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the names and titles of the current membership of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Performance Review Board as of October 1, 2019.

**DATES:** *Applicable:* October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Individual Offices of Inspectors General at the telephone numbers listed below.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Inspector General Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. The Inspector General Reform Act of 2008, established the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of Inspectors General. The CIGIE is an interagency council whose executive chair is the Deputy Director for Management, Office of Management and Budget, and is comprised principally of the 73 Inspectors General (IGs).

**II. CIGIE Performance Review Board**

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the Council of the Inspectors General on Integrity and Efficiency Performance Review Board, as of October 1, 2019, are as follows:

*Agency for International Development*

Phone Number: (202) 712–1150

CIGIE Liaison—Thomas Ullom (202) 712–1150

Thomas Ullom—Deputy Inspector General.
Justin Brown—Counselor to the Inspector General (SL).
Daniel Altman—Assistant Inspector General for Investigations.
Suzann Gallaher—Deputy Assistant Inspector General for Investigations.
Thomas Yatsco—Assistant Inspector General for Audit.
Alvin A. Brown—Deputy Assistant Inspector General for Audit.
Toayoa Aldridge—Deputy Assistant Inspector General for Audit.
Jason Carroll—Assistant Inspector General for Management.
Parisa Salehi—Deputy Assistant Inspector General for Management.
Nicole Angarella—General Counsel to the Inspector General.

*Department of Agriculture*

Phone Number: (202) 720–8001

CIGIE Liaison—Angel N. Bethea (202) 720–8001

Ann M. Coffey—Deputy Inspector General.
Christy A. Slamowitz—Counsel to the Inspector General.
Gilroy Harden—Assistant Inspector General for Audit.
Steven H. Rickrode, Jr.—Deputy Assistant Inspector General for Audit.
Yarisis Rivera Rojas—Deputy Assistant Inspector General for Audit.
Peter P. Paradis, Sr.—Deputy Assistant Inspector General for Investigations.
Virginia E.B. Rone—Assistant Inspector General for Data Sciences.
Robert J. Huttenlocker—Assistant Inspector General for Management.

*Department of Commerce*

Phone Number: (202) 482–4661

CIGIE Liaison—Clark Reid (202) 482–4661

E. Wade Green—Counsel to the Inspector General.

Richard Bachman—Assistant Inspector General for Audits.
Carol Rice—Assistant Inspector General for Audits.
Mark Zabarsky—Principal Assistant Inspector General.

*Department of Defense*

Phone Number: (703) 604–8324

Acting CIGIE Liaison—Brett Mansfield (703) 604–8300

Daniel R. Blair—Deputy Chief of Staff.
Michael S. Child, Sr.—Deputy Inspector General for Overseas Contingency Operations.
Carol N. Gorman—Assistant Inspector General for Readiness and Cyber Operations.
Paul Hadjiyane—General Counsel.
Carolyn R. Hantz—Assistant Inspector General for Program, Combatant Command and Overseas Contingency Operations.
Glenn A. Fine—Principal Deputy Inspector General.
Janice M. Flores—Assistant Inspector General for Investigations, Internal Operations.
Marguerite C. Garrison—Deputy Inspector General for Administrative Investigations.
Theresa S. Hull—Assistant Inspector General for Acquisition and Sustainment Management.
Kelly P. Mayo—Assistant Inspector General for Investigations.
Troy M. Meyer—Principal Assistant Inspector General for Audit.
Dermot F. O'Reilly—Deputy Inspector General for Investigations.
Michael J. Roark—Deputy Inspector General for Evaluations.
Steven A. Stebbins—Chief of Staff.
Paul K. Sternal—Assistant Inspector General for Investigations, Investigative Operations.
Randolph R. Stone—Assistant Inspector General for Space, Intelligence, Engineering, and Oversight.
Richard B. Vasquez—Assistant Inspector General for Readiness and Global Operations.
Lorin T. Venable—Assistant Inspector General for Financial Management and Reporting.
Jacqueline L. Wicecarver—Deputy Inspector General for Audit.
David G. Yacobucci—Assistant Inspector General for Data Analytics.

*Department of Education OIG*

Phone Number: (202) 245–6900

CIGIE Liaison—Keith Maddox (202) 748–4339

David Morris—Assistant Inspector General for Management Services.
Robert Mancuso—Assistant Inspector General for Information Technology Audits and Computer Crimes Investigations.
Bryon Gordon—Assistant Inspector General for Audit.
Sean Dawson—Deputy Assistant Inspector General for Audit.
Aaron Jordan—Assistant Inspector General for Investigations.
Mark Smith—Deputy Assistant Inspector General for Investigations.

*Department of Energy*

Phone Number: (202) 586–4393

CIGIE Liaison—Sabrina Ferguson-Ward (202) 586–5798

John Dupuy—Acting Principal Deputy Inspector General and Deputy Inspector General for Investigations.
Virginia Grebasch—Counsel to the Inspector General.
Michelle Anderson—Deputy Inspector General for Audits and Inspections.
Dustin Wright—Assistant Inspector General for Investigations.
Sarah Nelson—Assistant Inspector General for Audits and Administration.
Jennifer Quinones—Assistant Inspector General for Audits and Inspections—Eastern.
Bruce Miller—Assistant Inspector General for Audits and Inspections—Western.
Jack Rouch—Deputy Assistant Inspector General for Audits.
Debra Solmonson—Deputy Assistant Inspector General for Audits and Inspections.
John McCoy II—Deputy Assistant Inspector General for Audits.

*Environmental Protection Agency*

CIGIE Liaison—Jennifer Kaplan (202) 566–0918

Charles Sheehan—Deputy Inspector General.
Edward Shields—Associate Deputy Inspector General.
Kevin Christensen—Assistant Inspector General for Audit and Evaluation.
Helina Wong—Assistant Inspector General for Investigations.

*Federal Labor Relations Authority*

Phone Number: (202) 218–7744

CIGIE Liaison—Dana Rooney (202) 218–7744

Dana Rooney—Inspector General.

*Federal Maritime Commission*

Phone Number: (202) 523–5863

CIGIE Liaison—Jon Hatfield (202) 523–5863

Jon Hatfield—Inspector General.

*Federal Trade Commission*

Phone Number: (202) 326–2355

CIGIE Liaison—Andrew Katsaros (202) 326–2355

Andrew Katsaros—Inspector General.

*General Services Administration*

Phone Number: (202) 501–0450

CIGIE Liaison—Phyllis Goode (202) 273–7270

Robert C. Erickson—Deputy Inspector General.
Larry L. Gregg—Associate Inspector General.
Edward Martin—Counsel to the Inspector General.
R. Nicholas Goco—Assistant Inspector General for Audits.
Barbara Bouldin—Deputy Assistant Inspector General for Acquisition Program Audits.
Brian Gibson—Deputy Assistant Inspector General for Real Property Audits.
James E. Adams—Assistant Inspector General for Investigations.
Patricia D. Sheehan—Assistant Inspector General for Inspections.
Kristine Preece—Assistant Inspector General for Administration.

*Department of Health and Human Services*

Phone Number: (202) 619–3148

CIGIE Liaison—Elise Stein (202) 619–2686

Christi Grimm—Chief of Staff.
Robert Owens, Jr.—Deputy Inspector General for Management and Policy.
Caryl Brzymialkiewicz—Assistant Inspector General/Chief Data Officer.
Chris Chilbert—Assistant Inspector General/Chief Information Officer.
Gary Cantrell—Deputy Inspector General for Investigations.
Suzanne Murrin—Deputy Inspector General for Evaluation and Inspections.
Erin Bliss—Assistant Inspector General for Evaluation and Inspections.
Ann Maxwell—Assistant Inspector General for Evaluation and Inspections.
Gregory Demske—Chief Counsel to the Inspector General.
Robert DeConti—Assistant Inspector General for Legal Affairs.
Lisa Re—Assistant Inspector General for Legal Affairs.
Gloria Jarmon—Deputy Inspector General for Audit Services.
Amy Frontz—Assistant Inspector General for Audit Services.
Carrie Hug—Assistant Inspector General for Audit Services.
Brian Ritchie—Assistant Inspector General for Audit Services.

*Department of Homeland Security*

Phone Number: (202) 981–6000

CIGIE Liaison—Erica Paulson (202) 981–6392

Jennifer Costello—Deputy Inspector General.
Karen Ouzts—Deputy Counsel.
Diana Shaw—Assistant Inspector General for Special Reviews and Evaluations.
Donald Bumgardner—Deputy Assistant Inspector General for Audits.
Maureen Duddy—Deputy Assistant Inspector General for Audits.
Erica Paulson—Assistant Inspector General for External Affairs.
Sondra McCauley—Assistant Inspector General for Audits.
Thomas Salmon—Assistant Inspector General for Integrity and Quality Oversight.
Louise M. McGlathery—Assistant Inspector General for Management.

*Department of Housing and Urban Development*

Phone Number: (202) 708–0430

CIGIE Liaison—Michael White (202) 402–8410

Charles Jones—Deputy Inspector General.
John Buck—Deputy Assistant Inspector General for Audit.
Kimberly Randall—(Acting) Assistant Inspector General for Audit.
Laura Farrior—Deputy Assistant Inspector General for Management.
Christopher Webber—Deputy Assistant Inspector General for Information Technology.
Jeremy Kirkland—Counsel to the Inspector General.
Brian Pattison—Assistant Inspector General for Evaluation.

*Department of the Interior*

Phone Number: (202) 208–5635

CIGIE Liaison—Karen Edwards (202) 208–5635

Steve Hardgrove—Chief of Staff.
Kimberly McGovern—Assistant Inspector General for Audits, Inspections and Evaluations.
Matthew Elliott—Assistant Inspector General for Investigations.
Bruce Delaplaine—General Counsel.

*Department of Justice*

Phone Number: (202) 514–3435

CIGIE Liaison—John Lavinsky (202) 514–3435

William M. Blier—Deputy Inspector General.
Jonathan M. Malis—General Counsel.
Michael Sean O'Neill—Assistant Inspector General for Oversight and Review.
Patricia Sumner—Deputy Assistant Inspector General for Oversight and Review.
Jason R. Malmstrom—Assistant Inspector General for Audit.
Mark L. Hayes—Deputy Assistant Inspector General for Audit.
Sarah E. Lake—Assistant Inspector General for Investigations.
Nina S. Pelletier—Assistant Inspector General for Evaluation and Inspections.
Gregory T. Peters—Assistant Inspector General for Management and Planning.
Cynthia Lowell—Deputy Assistant Inspector for Management and Planning.

*Department of Labor*

Phone Number: (202) 693–5100

CIGIE Liaison—Luiz A. Santos (202) 693–7062

Larry D. Turner—Deputy Inspector General.
Dee Thompson—Counsel to the Inspector General.
Elliot P. Lewis—Assistant Inspector General for Audit.
Leia Burks—Deputy Assistant Inspector General for Investigations—Labor Racketeering and Fraud.
Thomas D. Williams—Assistant Inspector General for Management and Policy.
Charles Sabatos—Deputy Assistant Inspector General for Management and Policy.
Luiz A. Santos—Assistant Inspector General for Congressional and Public Relations.
Jessica Southwell—Chief Performance and Risk Management Officer.

*National Aeronautics and Space Administration*

Phone Number: (202) 358–1220

CIGIE Liaison—Renee Juhans (202) 358–1712

George A. Scott—Deputy Inspector General.
Frank LaRocca—Counsel to the Inspector General.
James R. Ives—Assistant Inspector General for Investigations.
Kimberly F. Benoit—Assistant Inspector General for Audits.
Ross W. Weiland—Assistant Inspector General for Management Planning.

*National Archives and Records Administration*

Phone Number: (301) 837–3000

CIGIE Liaison—John Simms (301) 837–3000

Jewel Butler—Assistant Inspector General for Audit.
Jason Metrick—Assistant Inspector General for Investigations.

*National Labor Relations Board*

Phone Number: (202) 273–1960

CIGIE Liaison—Robert Brennan (202) 273–1960

David P. Berry—Inspector General.

*National Science Foundation*

Phone Number: (703) 292–7100

CIGIE Liaison—Lisa Vonder Haar (703) 292–2989

Megan Wallace—Assistant Inspector General for Investigations.
Mark Bell—Assistant Inspector General for Audits.
Alan Boehm—Assistant Inspector General for Management.
Ken Chason—Counsel to the Inspector General.

*Nuclear Regulatory Commission*

Phone Number: (301) 415–5930

CIGIE Liaison—Judy Gordon (301) 415–5913

David C. Lee—Deputy Inspector General.
Rocco J. Pierri—Assistant Inspector General for Investigations.
Brett M. Baker—Assistant Inspector General for Audits.

*Office of Personnel Management*

Phone Number: (202) 606–1200

CIGIE Liaison—Faiza Mathon-Mathieu (202) 606–2236

Norbert E. Vint—Deputy Inspector General/Deputy Inspector General Performing the Duties of the Inspector General.
Michael R. Esser—Assistant Inspector General for Audits.
Melissa D. Brown—Deputy Assistant Inspector General for Audits.
Lewis F. Parker, Jr.—Deputy Assistant Inspector General for Audits.
Drew M. Grimm—Assistant Inspector General for Investigations.
Thomas W. South—Deputy Assistant Inspector General for Investigations.
James L. Ropelewski—Assistant Inspector General for Management.
Nicholas E. Hoyle—Deputy Assistant Inspector General for Management.
Gopala Seelamneni—Chief Information Technology Officer.

*Peace Corps*

Phone Number: (202) 692–2900

CIGIE Liaison—Joaquin Ferrao (202) 692–2921

Kathy Buller—Inspector General (Foreign Service).

Joaquin Ferrao—Deputy Inspector General and Legal Counsel (Foreign Service).

*United States Postal Service*

Phone Number: (703) 248–2100

CIGIE Liaison—Agapi Doulaveris (703) 248–2286

Elizabeth Martin—General Counsel.

Gladis Griffith—Deputy General Counsel.

Katherine Reilly—Deputy Assistant Inspector General, Mission Support.

*Railroad Retirement Board*

Phone Number: (312) 751–4690

CIGIE Liaison—Jill Roellig (312) 751–4993

Patricia A. Marshall—Counsel to the Inspector General.

*Small Business Administration*

Phone Number: (202) 401–0753

CIGIE Liaison—Mary Kazarian (202) 205–6586

Mark P. Hines—Assistant Inspector General for Investigations.

Andrea Deadwyler—Assistant Inspector General for Audits.

Sheldon Shoemaker—Assistant Inspector General for Management and Operations.

*Social Security Administration*

Phone Number: (410) 966–8385

CIGIE Liaison—Walter E. Bayer, Jr. (202) 358–6319

Steven L. Schaeffer—Chief of Staff.

Rona Lawson—Assistant Inspector General for Audit.

Joseph Gangloff—Chief Counsel to the Inspector General.

Michael Robinson—Senior Advisor to the Inspector General for Law Enforcement.

Jennifer Walker—Assistant Inspector General for Investigations.

Joscelyn Funnié—Counsel for Investigations and Enforcement.

*Special Inspector General for the Troubled Asset Relief Program*

Phone Number: (202) 622–1419

CIGIE Liaison—Kevin Gerrity (202) 622–8670

Kevin Gerrity—Deputy Special Inspector General.

Vincent Micone III—Assistant Inspector General—Management.

*Department of State and the Broadcasting Board of Governors*

Phone Number: (571) 348–3804

CIGIE Liaison—Sarah Breen (571) 348–3992

Norman P. Brown—Assistant Inspector General for Audits.

Sandra J. Lewis—Assistant Inspector General for Inspections.

Michael T. Ryan—Assistant Inspector General for Investigations.

Kevin S. Donohue—Deputy General Counsel.

Gayle L. Voshell—Deputy Assistant Inspector General for Audits.

Tinh T. Nguyen—Deputy Assistant Inspector General for Audits, Middle East Region Operations.

Lisa R. Rodely—Deputy Assistant Inspector General for Inspections.

Jeffrey D. Johnson—Deputy Assistant Inspector General for Inspections.

Brian Grossman—Deputy Assistant Inspector General for Investigations.

Donna J. Butler—Assistant Inspector General for Management.

Jeffrey McDermott—Assistant Inspector General for Evaluations and Special Projects.

*Department of Transportation*

Phone Number: (202) 366–1959

CIGIE Liaison—Nathan P. Richmond (202) 493–0422

Mitchell L. Behm—Deputy Inspector General.

Joseph W. Comé—Principal Assistant Inspector General for Auditing and Evaluation.

Charles A. Ward—Assistant Inspector General for Audit Operations and Special Reviews.

Matthew E. Hampton—Assistant Inspector General for Aviation Audits.

Barry DeWeese—Assistant Inspector General for Surface Transportation Audits.

Louis C. King—Assistant Inspector General for Financial and Information Technology Audits.

Mary Kay Langan-Feirson—Assistant Inspector General for Acquisition and Procurement Audits.

David Pouliott—Deputy Assistant Inspector General for Surface Transportation Audits.

Anthony Zakel—Deputy Assistant Inspector General for Aviation Audits.

*Department of the Treasury*

Phone Number: (202) 622–1090

CIGIE Liaison—Rich Delmar (202) 927–3973

Richard K. Delmar—Acting Inspector General.

Jeffrey Lawrence—Assistant Inspector General for Management.

Sally Luttrell—Assistant Inspector General for Investigations.

Deborah L. Harker—Assistant Inspector General for Audit.

Pauletta Battle—Deputy Assistant Inspector General for Financial Management and Transparency Audits.

Lisa A. Carter—Deputy Assistant Inspector General for Financial Sector Audits.

Donna F. Joseph—Deputy Assistant Inspector General for Cyber and Financial Assistance Audits.

*Treasury Inspector General for Tax Administration/Department of the Treasury*

Phone Number: (202) 622–6500

CIGIE Liaison—David Barnes (Acting) (202) 622–3062

Gladys Hernandez—Chief Counsel.

James Jackson—Deputy Inspector General for Investigations.

Gregory Kutz—Deputy Inspector General for Inspections and Evaluations.

Nancy LaManna—Assistant Inspector General for Audit, Management, Planning, and Workforce Development.

Russell Martin—Assistant Inspector General for Audit, Returns Processing, and Accounting Services.

Michael McKenney—Deputy Inspector General for Audit.

Danny Verneuille—Assistant Inspector General for Audit, Security, and Information Technology Services.

Matthew Weir—Assistant Inspector General for Audit, Compliance, and Enforcement Operations.

Jeffrey Long—Assistant Inspector General for Investigations, Threat, Agent Safety, and Sensitive Investigations Directorate.

Trevor Nelson—Assistant Inspector General for Investigations.

Ruben Florez—Assistant Inspector General for Investigations—Field.

*Department of Veterans Affairs*

Phone Number: (202) 461–4720

CIGIE Liaison—Jennifer Geldhof (202) 461–4677

Roy Fredrikson—Deputy Counselor to the Inspector General.

Brent Arronte—Deputy Assistant Inspector General for Audits and Evaluations.

John D. Daigh—Assistant Inspector General for Healthcare Inspections.

Dated: September 10, 2019.

**Douglas Holt,**

*Acting Executive Director.*

[FR Doc. 2019–20033 Filed 9–16–19; 8:45 am]

**BILLING CODE 6820–C9–P**

## DEPARTMENT OF EDUCATION

### Extension of the Application Deadline Date for the Fiscal Year 2019 Statewide Longitudinal Data Systems Program

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Institute of Education Sciences extends, for certain prospective eligible applicants described elsewhere in this notice, the deadline date for transmittal of applications for new awards for fiscal year (FY) 2019 under the Statewide Longitudinal Data Systems Program, Catalog of Federal Domestic Assistance (CFDA) number 84.372A. The Institute takes this action to allow more time for the preparation and submission of applications by prospective eligible applicants affected by Hurricane Dorian.

The extension of the application deadline date for this competition is intended to help eligible applicants that are located in an area for which the President has issued an emergency declaration related to Hurricane Dorian in Florida, Puerto Rico, North Carolina, South Carolina, and the U.S. Virgin Islands to compete fairly with other eligible applicants under this competition.

**DATES:** Deadline for Transmittal of Applications: September 26, 2019.

**FOR FURTHER INFORMATION CONTACT:** Nancy Sharkey at *Nancy.Sharkey@ed.gov* or (202) 245–7689.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On June 19, 2019, we published in the **Federal Register** (82 FR 24695) a notice inviting applications (NIA) for new awards for FY 2019 for the Statewide Longitudinal Data Systems Program. The application deadline in the NIA was September 17, 2019. We are extending the application deadline for this competition for applicants in affected areas in Florida, Puerto Rico, North Carolina, South Carolina, and the U.S. Virgin Islands in order to allow applicants more time to prepare and submit their applications.

*Eligibility:* The extension of the application deadline date in this notice applies to eligible applicants under the Statewide Longitudinal Data Systems Program, CFDA number 84.372A, that are located in an area for which the President has issued an emergency declaration (see *https://www.fema.gov/disasters/*), in Florida (FEMA Disaster designation 3419), Puerto Rico (FEMA Disaster designation 3417), North Carolina (FEMA Disaster designation 3423), South Carolina (FEMA Disaster designation 3421), and the U.S. Virgin Islands (FEMA Disaster designation 3418). Georgia is ineligible for this extension because, even though some portions of the State have been granted an ongoing FEMA emergency designation, the SEA is not located in one of the 12 ''designated areas'' covered in Georgia under FEMA Disaster designation 3422.

In accordance with the NIA, eligible applicants for this competition are limited to State educational agencies (SEAs). An SEA is the agency primarily responsible for the State supervision of elementary schools and secondary schools. See 20 U.S.C. 9601 (which incorporates by reference the definition of SEA in section 8101 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7801). The SEAs of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are eligible.

**Note:** All information in the NIA remains the same, except for the deadline date for these five SEAs.

*Program Authority:* 20 U.S.C. 9607.

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Mark Schneider,**

*Director, Institute of Education Sciences.*

[FR Doc. 2019–20113 Filed 9–16–19; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of a Letter Regarding the Duke-UNC Consortium for Middle East Studies

**AGENCY:** Office of the General Counsel, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department publishes a letter, dated August 29, 2019, notifying the University of North Carolina at Chapel Hill (''UNC'') of the Department's review of the Annual Project Reports (''APR'') submitted by the Duke-UNC Consortium for Middle East Studies (CMES) during the most recent and prior award periods, and the 2018 National Resource Center proposal.

**FOR FURTHER INFORMATION CONTACT:** Patrick Shaheen, U.S. Department of Education, Office of the General Counsel, 400 Maryland Ave. SW, room 6E300, Washington, DC 20202. Telephone: (202) 453–6339. Email: *Patrick.Shaheen@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Department publishes this letter, dated August 29, 2019, notifying the University of North Carolina Chapel Hill of the Department's review of the APR submitted by the Duke-UNC CMES during the most recent and prior award periods, and the 2018 National Resource Center proposal. The letter is in Appendix A of this notice.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have

Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Reed D. Rubinstein,**

*Principal Deputy General Counsel, Delegated the duties and authority of the General Counsel.*

## Appendix A—Letter to the University of North Carolina at Chapel Hill

August 29, 2019
Terry Magnuson, Ph.D.
Vice Chancellor for Research
The University of North Carolina at Chapel Hill Office of the Vice Chancellor for Research
312 South Building, Campus Box 4000
Chapel Hill, NC 27599–4000

Dear Dr. Magnuson:

Thank you for your letter of June 20, 2019, responding to the U.S. Department of Education's questions about the Duke-UNC Consortium for Middle East Studies (''Duke-UNC CMES'').

As you are aware, in Title VI of the Higher Education Act of 1965, as amended, Congress authorizes grants to protect the security, stability, and economic vitality of the United States by teaching American students the foreign languages and cultural competencies required to develop a pool of experts to meet our national needs. 20 U.S.C. 1021. The Secretary of Education may make Title VI grants to institutions of higher education or consortia of such institutions only for the purposes of establishing, strengthening, and operating comprehensive foreign language and area or international studies centers and programs, and of establishing, strengthening, and operating a diverse network of undergraduate foreign language and area or international studies centers and programs. 20 U.S.C. 11 22(a)(l)(A). Federal funding is conditioned on a demonstration that a given center or program is a ''national resource'' for teaching of any modem foreign language; for instruction in fields needed to provide full understanding of areas, regions, or countries in which such language is commonly used; for research and training in the international and foreign language aspects of professional and other fields of study; and for instruction and research on issues in world affairs that concern one or more countries. 20 U.S.C. 1122(a)(l)(B).

It is unlawful for institutions of higher education to use Title VI funds differently.

After reviewing your letter, the Annual Project Reports (''APR'') submitted by the Duke-UNC CMES during the most recent and prior award periods, and your 2018 National Resource Center proposal, the Department is concerned that most of the Duke-UNC CMES activities supported with Title VI funds are unauthorized and that Duke-UNC CMES may not qualify as an eligible National Resource Center. Among other things:

- You report that 6,791 students were enrolled in taxpayer-funded Middle East studies course but that only 960 students were enrolled in Middle East language courses. It is unclear whether this means 960 different people participated in foreign language instruction or if the total headcount in foreign language courses was 960, meaning that some students could have been counted more than once because most of your programs require students to complete three to eight semesters of foreign language. Similarly, you do not clarify how many of those students took three or more semesters of a given language or the level of language fluency they achieved.
- Your application asserts collaborations with other academic departments. However, these departments are not, for the most part, aligned with the requirement that National Resource Centers help students in science, technology, engineering, and mathematics fields achieve foreign language fluency. *See* 20 U.S.C. 1122(a)(2)(J).
- Many of the topics and titles listed under the area studies section of your prior APRs have little or no relevance to Title VI. For example, although Iranian art and film may be of subjects of deep intellectual interest and may provide insight regarding aspects of the people and culture of the Middle East, the sheer volume of such offerings highlights a fundamental misalignment between your choices and Title VI's mandates. Although a conference focused on ''Love and Desire in Modem Iran'' and one focused on Middle East film criticism may be relevant in academia, we do not see how these activities support the development of foreign language and international expertise for the benefit of U.S. national security and economic stability. Similarly, the link between the statutory goals and the academic papers referenced in your grant proposal, *Amihri Hatun: Performance, Gender-Bending and Subversion in the Early Modern Ottoman Intellectual History,* or *Radical Love: Teachings from Islamic Mystical Tradition,* is patently unclear. While the Duke-UNC CMES may certainly offer programs in Iranian art and film, these programs should not be funded or subsidized in any way by American taxpayers under Title VI unless you are able to clearly demonstrate that such programs are secondary to more rigorous coursework helping American students to become fluent Farsi speakers and to prepare for work in areas of national need.
- The Duke-UNC CMES appears to lack balance as it offers very few, if any, programs focused on the historic discrimination faced by, and current circumstances of, religious minorities in the Middle East, including Christians, Jews, Baha'is, Yadizis, Kurds, Druze, and others. Also, in your activities for elementary and secondary students and teachers, there is a considerable emphasis placed on the understanding the positive aspects of Islam, while there is an absolute absence of any similar focus on the positive aspects of Christianity, Judaism, or any other religion or belief system in the Middle East. This lack of balance of perspectives is troubling and strongly suggests that Duke-UNC CMES is not meeting legal requirement that National Resource Centers ''provide *a full understanding* of the areas, regions, or countries'' in which the modern foreign language taught is commonly used. *See* 20 U.S.C. 1122(a)(l)(B)(ii) (emphasis added); 34 CFR 656.3(b)(1).
- It appears from your APRs that the Duke-UNC CMES offers very little serious instruction preparing individuals to understand the geopolitical challenges to U.S. national security and economic needs but quite a considerable emphasis on advancing ideological priorities. For example, the description of an activity described as a ''conversation'' with Dr. Rosemary Corbett is ''Dr. Corbett traces the broader history of pressures placed on religious minorities in the last century to conform to dominant American frameworks for race, gender and political economy. These include the encouraging of community groups to provide social services to the dispossessed in compensation for the government's lack of welfare provisions in an aggressively capitalist environment.'' Another activity called ''Music on the Porch'' describes an outdoor concert series as an international program focused on Islam, music, and social change. The featured artist, Marco Pave, is described as a ''millennial Muslim from Memphis,'' who conducts workshops around the country on hip-hop and social justice, and he advocates greater support for the arts.'' It is hard to understand how these things are consistent with a National Resource Center and lawfully supported by taxpayer funds to ensure the ''security, stability, and economic vitality of the United States in a complex global era[.]'' 20 U.S.C. 1121(a)(l).
- The job placement results included in your grant proposal indicate that the Duke-UNC CEMS provides opportunities and support primarily for individuals to pursue academic careers rather than in government or business as Congress directs. That 35 percent of program graduates go to higher education positions and only 11 percent to government positions suggests that there are critical shortcomings and impermissible biases in the programming.
- The teacher-training activities hosted by the Duke-UNC CMES lack lawful focus on language development and instead advance narrow, particularized views of American social issues. For example, a teacher training seminar included in a prior APR is described as having provided an opportunity for teachers to explore ''issues of multicultural education and equity to build a culture and climate of respect in the classroom. Educators dove deeper during interactive break-out sessions focused on unconscious bias, safe classrooms for all, using film for global education, why culture matters and working across cultures, serving LGBTIQ youth in schools, culture and the media, diverse books for the classroom and more.'' There is a startling lack of focus on geography, geopolitical issues, history, and language of the area, as Congress required in Title VI.

The Department believes the Duke-UNC CMES has failed to carefully distinguish between activities lawfully funded under Title VI, and other activities, perhaps consistent with and protected by general

principles of academic freedom, that are plainly unqualified for taxpayer support.

Furthermore, it seems clear foreign language instruction and area studies advancing the security and economic stability of the United States have taken ''a back seat'' to other priorities at the Duke-UNC CMES. Notably, most of the instructors of foreign language courses are nontenure track lecturers or teaching assistants, whereas most of the instructors of other courses are tenured faculty. Given the important role tenured faculty play in attracting students to foreign language instruction and majors and enabling students to overcome the difficulty of mastering a language, the lack of tenured foreign languages faculty relative to the number of tenured culture studies faculty, may signal a potentially serious misalignment between Title IV requirements and the Duke-UNC CMES's orientation and activities.

The Department will hold the Duke-UNC CMES accountable for ensuring all Title VI funded or subsidized activities directly reflect express Congressional mandates and purposes. Therefore, as a condition for future Title VI funding, the Duke-UNC CMES is directed to provide a revised schedule of activities that it plans to support for the coming year, including a description demonstrating how each activity promotes foreign language learning and advances the national security interests and economic stability of the United States. For example, cultural studies providing historical information about customs and practices in the Middle East and assisting students to understand and navigate the culture of another country, in concert with rigorous foreign language training, could help develop a pool of experts needed to protect U.S. national security and economic stability and therefore may well be within Title VI's ambit. To be clear, activities focusing on American culture or academic preferences that do not directly promote foreign language learning and advance the national security interests and economic stability of the United States are not to be funded under Title VI.

Also, the Duke-UNC CMES is required to demonstrate that it has prioritized foreign language instruction as required by law. More equal utilization of comparably credentialed faculty in foreign language instruction might prove to be an appropriate measure in this regard.

The Duke-UNC CMES is further required to provide the Department with a full list of courses in Middle East studies, including academic rank and employment status of each instructor who teaches each course.

Finally, the Duke-UNC CMES is further required to develop and implement effective institutional controls ensuring all future Title VI-funded activities directly promote foreign language learning and advance the national security interests and economic stability of the United States, thereby meeting statutory requirements and meriting taxpayer funding.

The Department must obligate the funds to continue support for the Duke-UNC CMES by no later than September 30, 2019. Consequently, it is critically important that you respond in writing to this letter with a preliminary plan and timetable for carrying out the above-specified compliance activities on or before September 22, 2019.

Sincerely,
Robert King
Assistant Secretary

Cc: Charles Kurzman, Ph.D., Professor, University of North Carolina at Chapel Hill
Kevin Guskiewicz, Interim Chancellor, University of North Carolina at Chapel Hill
Richard Stevens, Chair, University of North Carolina Board of Trustees
Vincent E. Price, President, Duke University
Jack 0. Bovender, Jr., Chair, Duke University Board of Trustees

[FR Doc. 2019–20067 Filed 9–16–19; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge; Meeting

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, October 9, 2019; 6:00 p.m.

**ADDRESSES:** DOE Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37831.

**FOR FURTHER INFORMATION CONTACT:** Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; email: *Melyssa.Noe@orem.doe.gov.* Or visit the website at: *https://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer (DDFO)
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Presentation: Processing of Uranium 233 Materials
- Public Comment Period
- Motions/Approval of September 11, 2019 Meeting Minutes
- Status of Outstanding Recommendations
- Alternate DDFO Report
- Committee Reports
- Adjourn

*Public Participation:* The meeting is open to the public. The EM SSAB, Oak Ridge, 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 Melyssa P. Noe at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings.*

Signed in Washington, DC, on September 12, 2019.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2019–20114 Filed 9–16–19; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–8770–000]**

### Merchant, Robert F.; Notice of Filing

Take notice that on September 10, 2019, Robert F. Merchant filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b), Part 45 of the Federal

Energy Regulatory Commission's (Commission) regulations, 18 CFR part 45 (2019), and Order No. 664.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on October 1, 2019.

Dated: September 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20066 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 3820–012]**

## Aclara Meters, LLC;

## Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to Surrender License.

b. *Project No:* 3820–012.

c. *Date Filed:* March 29, 2019.

d. *Applicant:* Aclara Meters, LLC.

e. *Name of Project:* Somersworth Hydroelectric Project.

f. *Location:* The project is located on the Salmon Falls River in Stafford County, New Hampshire, and York County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Robert Enyard, Vice President, Aclara Meters, LLC, 77 Westport Plaza, Suite 500, St. Louis, MO 63146, (314) 895–6436, *renyard@aclara.com.*

i. *FERC Contact:* Diana Shannon, (202) 502–6136, *diana.shannon@ferc.gov.*

*j. Deadline for filing comments, motions to intervene, and protests:* October 11, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3820–012. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to surrender the project. No significant modifications to the existing dams, buildings, or structures and no ground disturbing activities are proposed. The applicant proposes to fill the forebay and penstock with sand, remove all electrical equipment (cabinets) from the powerhouse, and close all the gates to the gatehouse except for the 2-foot by 2-foot fill gate to provide Aclara Meters' processing water (approximately 0.04–0.05 cubic feet per second) into the canal. All other flow would continue to be spilled over the spillway or through the bypass gate in the canal. The project has been inoperable since 2011 due to a penstock failure.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone

number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 11, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20061 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL19–96–000]**

## Cimarron Windpower II, LLC v. Southwest Power Pool, Inc.; Notice of Complaint

Take notice that on September 10, 2019, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and 825h (2018) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2019), Cimarron Windpower II, LLC (Complainant), filed a formal complaint against Southwest Power Pool, Inc. (SPP or Respondent) alleging that SPP violated its tariff and contractual obligations by failing to properly implement Attachment Z2 of its tariff, all as more fully explained in the complaint.

Complainant certifies that the complaint was served on the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on October 10, 2019.

Dated: September 11, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20059 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG19–180–000.

*Applicants:* E.ON Climate & Renewables North America.

*Description:* Self-Certification of Exempt Wholesale Generator Status of Peyton Creek Wind Farm, LLC.

*Filed Date:* 9/10/19.

*Accession Number:* 20190910–5080.

*Comments Due:* 5 p.m. ET 10/1/19.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2417–003; ER13–122–003.

*Applicants:* ExxonMobil Baton Rouge Complex, ExxonMobil Beaumont Complex.

*Description:* Supplement to June 25, 2018 Triennial Market-Power Analysis for the Central Region of ExxonMobil Baton Rouge Complex, et al.

*Filed Date:* 3/28/19.

*Accession Number:* 20190328–5284.

*Comments Due:* 5 p.m. ET 9/20/19.

*Docket Numbers:* ER19–2774–000.

*Applicants:* Public Service Company of Colorado.

*Description:* § 205(d) Rate Filing: 2019–09–09 Revised LGIP to be effective 12/5/2019.

*Filed Date:* 9/9/19.

*Accession Number:* 20190909–5139.

*Comments Due:* 5 p.m. ET 9/30/19.

*Docket Numbers:* ER19–2775–000.

*Applicants:* Northern Indiana Public Service Company, Rosewater Wind Farm LLC.

*Description:* Request for Authorization to Undertake Affiliate Sales of Northern Indiana Public Service Company LLC, et al.

*Filed Date:* 9/9/19.

*Accession Number:* 20190909–5152.

*Comments Due:* 5 p.m. ET 9/30/19.

*Docket Numbers:* ER19–2776–000.

*Applicants:* Lincoln Clean Energy, LLC.

*Description:* Petition for Limited Waiver of Lincoln Clean Energy, LLC.

*Filed Date:* 9/9/19.

*Accession Number:* 20190909–5154.

*Comments Due:* 5 p.m. ET 9/23/19.

*Docket Numbers:* ER19–2777–000.

*Applicants:* Portland General Electric Company.

*Description:* Portland General Electric Company submits Average System Cost Filing for Sales of Electric Power to the Bonneville Power Administration, FY 2020–2021.

*Filed Date:* 9/10/19.

*Accession Number:* 20190910–5078.

*Comments Due:* 5 p.m. ET 10/1/19.

*Docket Numbers:* ER19–2778–000.

*Applicants:* Nevada Power Company.

*Description:* § 205(d) Rate Filing: Service Agreement No. 13–00018 Amended NITSA to be effective 9/10/2019.

*Filed Date:* 9/10/19.

*Accession Number:* 20190910–5105.

*Comments Due:* 5 p.m. ET 10/1/19.

*Docket Numbers:* ER19–2779–000.

*Applicants:* Nevada Power Company.

*Description:* § 205(d) Rate Filing: Service Agreement No. 13–00019 Amended NITSA to be effective 11/10/2019.

*Filed Date:* 9/10/19.

*Accession Number:* 20190910–5108.

*Comments Due:* 5 p.m. ET 10/1/19.

*Docket Numbers:* ER19–2780–000.

*Applicants:* Nevada Power Company.

*Description:* § 205(d) Rate Filing: Service Agreement No. 13–00020 Amended NITSA to be effective 11/10/2019.

*Filed Date:* 9/10/19.

*Accession Number:* 20190910–5111.

*Comments Due:* 5 p.m. ET 10/1/19

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: September 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20060 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC19–137–000.

*Applicants:* Sage Solar I LLC, Sage Solar II LLC, Sage Solar III LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act, et al. of Sage Solar I, LLC, et al.

*Filed Date:* 9/10/19.

*Accession Number:* 20190910–5146.

*Comments Due:* 5 p.m. ET 10/1/19.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG19–181–000.

*Applicants:* SR Hazlehurst III, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of SR Hazlehurst III, LLC.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5082.

*Comments Due:* 5 p.m. ET 10/2/19.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER19–1576–002.

*Applicants:* Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

*Description:* Compliance filing: DEP H.1 Formula Rate Substitute. Compliance Filing to be effective 5/15/2019.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5070.

*Comments Due:* 5 p.m. ET 10/2/19.

*Docket Numbers:* ER19–2774–001.

*Applicants:* Public Service Company of Colorado.

*Description:* Tariff Amendment: 2019–09–11 Revised LGIP Errata Filing to be effective 12/5/2019.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5061.

*Comments Due:* 5 p.m. ET 10/2/19.

*Docket Numbers:* ER19–2781–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Annual Calculation of the Cost of New Entry value (''CONE'') for each Local Resource Zone (''LRZ'') in the MISO Region of Midcontinent Independent System Operator, Inc.

*Filed Date:* 9/10/19.

*Accession Number:* 20190910–5150.

*Comments Due:* 5 p.m. ET 10/1/19.

*Docket Numbers:* ER19–2782–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original ISA, SA No. 5461 and Original ICSA, SA No. 5462; Queue No. Y3–092 to be effective 11/10/2019.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5031.

*Comments Due:* 5 p.m. ET 10/2/19.

*Docket Numbers:* ER19–2783–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA and ICSA, SA Nos. 4696 and 4736; Queue AA2–053/AA2–174 to be effective 6/12/2017.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5069.

*Comments Due:* 5 p.m. ET 10/2/19.

*Docket Numbers:* ER19–2784–000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) Rate Filing: SA 884—Agreement to Provide Services with Fagen, Inc. to be effective 9/12/2019.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5071.

*Comments Due:* 5 p.m. ET 10/2/19.

*Docket Numbers:* ER19–2785–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: First Revised ISA No. 2142; Queue No. AE2–061 to be effective 8/12/2019.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5074.

*Comments Due:* 5 p.m. ET 10/2/19.

*Docket Numbers:* ER19–2786–000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: Cedar Springs Wind NC–LGIA (Rev 1) to be effective 9/1/2019.

*Filed Date:* 9/11/19.

*Accession Number:* 20190911–5085.

*Comments Due:* 5 p.m. ET 10/2/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 11, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20064 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP15–23–012.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Compliance filing RP15–23 Compliance to be effective 8/9/2019.

*Filed Date:* 9/9/19.

*Accession Number:* 20190909–5088.

*Comments Due:* 5 p.m. ET 9/23/19.

*Docket Numbers:* RP19–1426–002.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* Compliance filing CF Rate Schedule W–1 to be effective 9/1/2019.

*Filed Date:* 9/9/19.

*Accession Number:* 20190909–5046.

*Comments Due:* 5 p.m. ET 9/23/19.

*Docket Numbers:* RP19–1548–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* § 4(d) Rate Filing: Negotiated Rate—MC Global to CIMA 8959258 to be effective 9/7/2019.

*Filed Date:* 9/9/19.

*Accession Number:* 20190909–5079.

*Comments Due:* 5 p.m. ET 9/23/19.

*Docket Numbers:* RP19–1549–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing: Clarifications and Clean-up Items related to Future GMS Implementation to be effective 10/9/2019.

*Filed Date:* 9/9/19.

*Accession Number:* 20190909–5084.

*Comments Due:* 5 p.m. ET 9/23/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 10, 2019.

**Nathaniel J. Davis Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20062 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR19–34–000]**

### Medallion Midland Gathering, LLC and Medallion Pipeline Company, LLC; Notice of Petition for Declaratory Order

Take notice that on September 9, 2019, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), Medallion Midland Gathering, LLC and Medallion Pipeline Company, LLC (collectively referred to as the Carriers or Petitioners), filed a petition for declaratory order seeking approval of open season procedures, transportation services agreements, rate structure, and proposed joint tariff service on the Carriers' respective pipeline systems, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on October 9, 2019.

Dated: September 11, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20065 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2570–032]**

### AEP Generation Resources, Inc.; Notice of Teleconference

a. *Project Name and Number:* Racine Hydroelectric Project No. 2570.

b. *Applicant:* AEP Generation Resources, Inc.

c. *Date and Time of Teleconference:* September 26, 2019, 1:00 p.m. Eastern Standard Time.

d. *FERC Contact:* Aaron Liberty at (202) 502–6862, *aaron.liberty@ferc.gov.*

e. *Purpose of Meeting:* Federal Energy Regulatory Commission (Commission) staff will participate in a teleconference with AEP Generation Resources, Inc. (AEP Generation Resources), the U.S. Fish and Wildlife Service (FWS), and the West Virginia Division of Natural Resources (West Virginia DNR) to discuss the American eel surveys that are required to be conducted at the Racine Hydroelectric Project. FWS and West Virginia DNR filed separate letters with the Commission on August 22 and August 23, 2019, respectively, detailing their concerns associated with these surveys. Specifically, the resource agencies state that AEP Generation Resource's proposed methodologies for these surveys would not achieve the goals and the objectives of the Commission's approved study plan, and request a teleconference to discuss study methodologies.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend by phone. Please call Aaron Liberty at (202) 502–6862, or email *aaron.liberty@ferc.gov* by September 25, 2019, to RSVP and to receive specific instructions on how to participate.

Dated: September 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–20063 Filed 9–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2010–0291; FRL–9999–93–OECA]**

### Proposed Information Collection Request; Comment Request; State Review Framework

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit an information collection request (ICR), ''State Review Framework (EPA ICR No. 2185.07, OMB Control No. 2020–0031) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before November 18, 2019.

**ADDRESSES:** Submit your comments, referencing Docket ID EPA–HQ–OECA–2010–0291 online using *www.regulations.gov* (our preferred method or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Christopher Knopes, Office of Enforcement and Compliance Assurance, Office of Compliance; Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–2337; email address: *knopes.christopher@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* The State Review Framework is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA Regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results. This request will allow OECA to collect information from enforcement and compliance files reviewed during routine on-site visits of state or local agency offices that will assist in the evaluation of the State Review Framework implementation from FY 2020 to the end of FY 2023. It will allow also EPA to make inquiries to assess the State Review Framework process, including the consistency achieved among the EPA Regions and states, the resources required to conduct the reviews, and the overall effectiveness of the program.

*Form Numbers:* None.

*Respondents/affected entities:* States, localities, and territories.

*Respondent's obligation to respond:* Required as part of program authorization under the Clean Water, Clean Air, and Resource Conservation and Recovery Acts.

*Estimated number of respondents:* 54.

*Frequency of response:* Once every five years.

*Total estimated burden:* 2,358 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $86,982 (per year).

*Changes in Estimates:* There is a decrease of 36 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to using a different sampling of respondents to provide the hourly estimates, in addition to the respondents' continued experience with the review process and collective efforts to make the review more efficient.

Dated: August 29, 2019.

**Christopher A. Knopes,**

*Director, Planning, Measures, and Oversight Division, Office of Compliance, OECA.*

[FR Doc. 2019–20131 Filed 9–16–19; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0779]**

### Information Collections 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 of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments shall be submitted on or before November 18, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0779.

*Title:* Sections 90.20(a)(1)(iii), 90.769, 90.767, 90.763(b)(l)(i)(a), 90.763(b)(l)(i)(B), 90.771(b) and 90.743, Rules for Use of the 220 MHz Band by the Private Land Mobile Radio Service.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 31 respondents; 111 responses.

*Estimated Time per Response:* 2 hours to 10 hours.

*Frequency of Response:* On occasion reporting requirement and third-party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 303(g), 303(r) and 332(a).

*Total Annual Burden:* 778 hours.

*Total Annual Cost:* $90,000.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is a need for confidentiality with this collection of information.

*Needs and Uses:* The Commission will submit this expiring collection to the Office of Management and Budget (OMB) for approval.

The Commission is requesting approval for an extension of information collection 3060–0779. The collection includes rules to govern the future operation and licensing of the 220–222 MHz and (220 MHz service). In establishing this licensing plan, FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for a radio service, a certain number of regulatory and information burdens are necessary to verify licensee compliance with FCC rules.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2019–20055 Filed 9–16–19; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Approved by the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved a new information collection associated with the Commission's 833 Auction Procedures Public Notice (FCC 19–75) (Public Notice), for a period of six months pursuant to the Paperwork Reduction Act of 1995.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Contact Nicole Ongele, *Nicole.Ongele@fcc.gov,* (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1264.

*OMB Approval Da*te: September 9, 2019.

*OMB Expiration Date:* March 31, 2020.

*Title:* Application to Participate in a Toll Free Number Auction, FCC Form 833.

*Form Number:* FCC Form 833.

*Respondents:* Business or other for-profit entities, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Governments.

*Number of Respondents and Responses:* 200 respondents; 200 responses.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* On-occasion reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1, 4(i), 201(b) and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 251(e)(1).

*Total Annual Burden:* 300 hours.

*Total Annual Cost:* No Cost.

*Nature and Extent of Confidentiality:* Information collected on FCC Form 833 is made available for public inspection, and the Commission is not requesting that respondents submit confidential information as part of the pre-auction application process. For individuals, the Privacy Act, 5 U.S.C. 552*a,* is the statutory authority for confidentiality and applies to this information collection. To the extent the information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have certain information collected on FCC Form 833 withheld from public inspection, the respondent may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules. *See* 47 CFR 0.459.

*Privacy Act:* The Commission will determine if a Privacy Impact Assessment is required.

*Needs and Uses:* In August 2019, the Commission adopted the *833 Auction Procedures Public Notice* (FCC 19–75), which established application and bidding procedures for the 833 Auction and required the use of FCC Form 833 to apply to participate in the auction. The Commission's rules and related requirements are designed to ensure that the competitive bidding process for assigning toll free numbers is limited to qualified applicants, deter possible abuse of the bidding process, and enhance the use of competitive bidding to assign toll free numbers in furtherance of the public interest. Applicants will use FCC Form 833 to submit the required disclosures and certifications, and the information collected on FCC Form 833 will then be reviewed to determine if an applicant is qualified to bid in the 833 code toll free number auction (833 Auction). The 833 Auction will not be able to occur without the collection of information on FCC Form 833. Without the information collected on FCC Form 833, a determination of whether the applicant is qualified to bid in the 833 Auction cannot be made.

The Commission received emergency approval from OMB for the information collection requirements contained in OMB Control Number 3060–1264 on September 9, 2019.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2019–20056 Filed 9–16–19; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1225]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before November 18, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1225.

*Title:* National Deaf-Blind Equipment Distribution Program.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; businesses or other for-profit entities; not-for-profit institutions; state, local, or tribal governments.

*Number of Respondents and Responses:* 69 respondents; 3,806 responses.

*Estimated Time per Response:* 0.5 hours (30 minutes) to 40 hours.

*Frequency of Response:* Annual, semiannual, quarterly, monthly, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefit. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), and 719 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620.

*Total Annual Burden:* 7,793 hours.

*Total Annual Cost:* $600.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the Commission's system of records notice (SORN), FCC/CGB–3, ''National Deaf-Blind Equipment Distribution Program,'' which became effective on February 28, 2012.

*Privacy Impact Assessment:* The Commission is in the process of preparing the Privacy Impact Assessment (PIA) related to the personally identified information (PII) covered by these information collections, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

*Needs and Uses:* Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) added section 719 to the Communications Act of 1934, as amended (the Act). Pubic Law 111–260, 124 Stat. 2751 (2010); Public Law 111–265, 124 Stat. 2795 (2010) (making technical corrections); 47 U.S.C. 620. Section 719 of the Act requires the Commission to establish rules that define as eligible for up to $10,000,000 of support annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind. 47 U.S.C. 620(a), (c). Accordingly, on April 6, 2011, the Commission released a Report and Order, document FCC 11–56, that established the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program.

On August 5, 2016, the Commission released a Report and Order, document FCC 16–101, adopting rules to establish the NDBEDP, also known as ''iCanConnect,'' as a permanent program. *See* 47 CFR 64.6201 through 64.6219.

In document FCC 16–101, the Commission adopted rules requiring the following:

(a) Entities must apply to the Commission for certification to receive reimbursement from the TRS Fund for NDBEDP activities. The FCC's Consumer and Governmental Affairs Bureau (CGB or Bureau) certified 56 programs—one for each state, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands—for a period of five years, from July 1, 2017, through June 30, 2022. Incumbent programs must apply to renew their certifications, if desired, and potential new entrants must also apply for certification by July 1, 2021.

(b) A program wishing to relinquish its certification before its certification expires must provide written notice of its intent to do so.

(c) Certified programs must disclose to the Commission actual or potential conflicts of interest.

(d) Certified programs must notify the Commission of any substantive change that bears directly on its ability to meet the qualifications necessary for certification.

(e) A certified entity may present written arguments and any relevant documentation as to why suspension or revocation of certification is not warranted.

(f) When a new entity is certified as a state's program, the previously certified entity must take certain actions to complete the transition to the new entity.

(g) Certified programs must require an applicant to provide verification that the applicant is deaf-blind.

(h) Certified programs must require an applicant to provide verification that the applicant meets the income eligibility requirement.

(i) Certified programs must re-verify the income and disability eligibility of an equipment recipient under certain circumstances.

(j) Certified programs must permit the transfer of an equipment recipient's account when the recipient relocates to another state.

(k) Certified programs must include an attestation on consumer application forms.

(l) Certified programs must conduct annual audits and submit to Commission-directed audits.

(m) Certified programs must document compliance with NDBEDP requirements, provide such documentation to the Commission upon request, and retain such records for at least five years.

(n) Certified programs must submit reimbursement claims as instructed by the TRS Fund Administrator, and supplemental information and documentation as requested. In addition, the entity selected to conduct national outreach will submit claims for reimbursement on a quarterly basis.

(o) Certified programs must submit reports every six months as instructed by the NDBEDP Administrator. In addition, the entity selected to conduct national outreach will submit an annual report.

(p) Informal and formal complaints may be filed against NEDBEDP certified programs, and the Commission may conduct such inquiries and hold such proceedings as it may deem necessary.

(q) Certified programs must include the NDBEDP whistleblower protections in appropriate publications.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2019–20057 Filed 9–16–19; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Privacy Act of 1974; System of Records

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final notice of a modified system of records.

**SUMMARY:** The Board has adopted as final, without change, the new system of records titled *BGFRS–40, ''FRB—Board Subscription Services.''*

**DATES:** Applicable September 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** David B. Husband, Senior Attorney, (202) 530–6270, or *david.b.husband@frb.gov;* Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Board published a system of record notice in the **Federal Register** at 84 FR 28300 on June 18, 2019, to modify the system of records, entitled BGFRS–40, ''FRB—Board Subscription Services.'' BGFRS–40 maintains subscription-related information regarding individuals who subscribe to Board publications. The Board received one public comment on the notice, which concerned the commenter's own records related to long-term securities. The comment was not about the Board's Subscription Services and thus is not germane to the proposed notice. Accordingly, the Board adopts as final the system of records entitled BGFRS–40, ''FRB—Board Subscription Services'' as previously published in 84 FR 28300 without change.

Board of Governors of the Federal Reserve System, September 12, 2019.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2019–20068 Filed 9–16–19; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (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 October 7, 2019.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Newport Trust Company, Minneapolis, Minnesota, as trustee of the Citizens State Bank of Loyal Stock Bonus Plan & Trust, Loyal, Wisconsin, along with Deanna Masephol, Loyal, Wisconsin, as Plan Administrator of the Citizens State Bank of Loyal Stock Bonus Plan & Trust, Loyal, Wisconsin;* to acquire voting shares of Citizens Bancshares of Loyal, Inc., parent holding company of Citizens State Bank of Loyal, both of Loyal, Wisconsin.

*B. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Parker C. McConachie, Wichita, Kansas, as trustee of the Parker C. McConachie Irrevocable Trust Dated 12/30/2012;* to retain voting shares of Andover Financial Corporation, parent of Andover State Bank, both of Andover, Kansas; and to be approved as a member of the McConachie family group.

Board of Governors of the Federal Reserve System, September 12, 2019.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2019–20098 Filed 9–16–19; 8:45 am]

**BILLING CODE P**

## GOVERNMENT PUBLISHING OFFICE

### Depository Library Council to the Acting Deputy Director Meeting

The Depository Library Council (DLC) to the Acting Deputy Director, Government Publishing Office (GPO) will meet on Monday, October 21, 2019 through Wednesday, October 23, 2019 in Arlington, Virginia. The sessions will take place from 8:00 a.m. to 5:30 p.m., Monday and Tuesday and 8:00 a.m. to 12:00 p.m., on Wednesday. The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, Virginia. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The United States Government Publishing Office is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

**John W. Crawford,**

*Acting Deputy Director, U.S. Government Publishing Office.*

[FR Doc. 2019–20103 Filed 9–16–19; 8:45 am]

**BILLING CODE 1520–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–19–BPL; Docket No. CDC–2019–0079]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Aerosols from cyanobacterial blooms: Exposures and health effects in a highly exposed population. CDC will conduct a study of 50 people highly exposed to cyanobacterial harmful algal blooms (CyanoHABs) to assess exposure to CyanoHAB aerosols and determine if exposure is associated with health symptoms and/or outcomes.

**DATES:** CDC must receive written comments on or before November 18, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2019–0079 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

Aerosols from cyanobacterial blooms: exposures and health effects in a highly exposed population—New—National Center for Environmental Health, Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC's National Center for Environmental Health (NCEH) has conducted two studies to investigate the associations between exposure to cyanoHAB toxins and health outcomes. In a 2006 study of recreational microcystin (MC) exposure at a small lake, CDC recruited 104 study participants from lake visitors planning recreational activities, such as boating, that would generate aerosols. During data collection for that study, MC concentrations within the bloom lake water were very low (<2–5 mg/L). Study participants' plasma MC concentrations were all below the limit of detection (0.147 mg/L) for the enzyme-linked immunosorbent assay (ELISA).

In 2007 CDC/NCEH conducted a study of recreational MC exposure among 81 children and adults planning recreational activities on either of three California reservoirs—two with significant, ongoing blooms of toxin-producing cyanobacteria, including Microcystis aeruginosa and one without a toxin-producing algal bloom. Our findings indicated that recreational activities in water bodies that experience toxin-producing cyanobacterial blooms generate aerosolized cyanotoxins, making inhalation a potential route of exposure.

It is likely that healthy people will not have adverse acute effects from periodic exposures to MC in aerosols generated by water based recreational activities in lakes with patches of toxin producing blooms. However, microcystins are potent liver toxins, and exposure may lead to more long-term effects. Other potent cyanotoxins, such as anatoxin-a or cylindrospermopsin may be incorporated into aerosols and inhaled and deposited in the body, presenting other, potentially synergistic, health risks. In addition, it is possible that swimming and other water-based activities that result in swallowing water present a higher risk for adverse health effects from ingesting cyanobacterial cells and extracellular toxins in the water.

CyanoHABs may present additional health risks as they senesce, or die off. Previous work done in Wisconsin demonstrated low but measurable concentrations of hydrogen sulfide and methane, both respiratory irritants, in the air near dense and decomposing cyanobacterial blooms.

The subpopulation to be studied comprises adults at least 18 years of age, who have extensive occupational exposure to CyanoHABs on Lake Okeechobee, Florida and connecting rivers. The study will be conducted on Lake Okeechobee, Florida, U.S.A., which has a history of prolonged CyanoHAB events.

CDC will notify potentially interested participants using posted flyers with a phone number to call. CDC will recruit participants using a phone-based screening survey to determine eligibility. Eligible study participants will complete three appointments (at the beginning of the study to provide baseline data and in the middle and end of the study period). During the interviews, participants will complete a survey, do a pulmonary function test, provide urine and nasal swabs for analysis of cyanotoxins, and provide a blood specimen for analysis of liver enzyme levels and creatinine. Before (pre-exposure) and after (post-exposure) each of 12 boat trips, study participants will complete the survey and provide urine and nasal swab specimens. Study participants will donate one fish from each trip to be analyzed for cyanobacterial toxins and the GPS

Exchange Format (GPX) file of the boat's travels.

Results from surveys, blood and urine specimens, nasal swabs, pulmonary function test results, air, and fish samples will be analyzed using univariate methods to summarize the data. CDC staff will compare the following information to determine if there are correlations: (1) Individual's pre-exposure results with post-exposure results, and (2) biomonitoring results with cyanotoxin levels in air and water. CDC staff will assess environmental and biomonitoring over time, and overlay satellite photos provided by NOAA with GPX tracking files from the boats to further assess exposure. The total annualized burden to respondents is 784 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Interested community members | Screening survey | 70 | 1 | 15/60 | 6 |
| Eligible study participants | Survey | 50 | 27 | 15/60 | 113 |
| Eligible study participants | Blood Specimen Results | 50 | 3 | 15/60 | 13 |
| Eligible study participants | Nasal Swab Results | 50 | 27 | 10/60 | 75 |
| Eligible study participants | Lung Function Test Results | 50 | 27 | 45/60 | 338 |
| Eligible study participants | Urine Specimen Results | 50 | 27 | 10/60 | 75 |
| Eligible study participants | GPX File of Trip | 50 | 12 | 15/60 | 50 |
| Eligible study participants | Record of fish for Analysis by EPA | 50 | 12 | 30/60 | 102 |
| Total | | | | | 784 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–20083 Filed 9–16–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–19–1173; Docket No. CDC–2019–0080]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Assessment of Potential Exposure from Private Wells for Drinking Water.'' The goal of this generic clearance information collection request is to expedite investigations to assess private well water for drinking in response to specific investigation requests.

**DATES:** CDC must receive written comments on or before November 18, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2019–0080 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal* (regulations.gov) *or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

**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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

Assessment of Potential Exposure from Private Wells for Drinking Water (OMB Control No. 0920–1173, Exp.

3/31/2020)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Safe Drinking Water Act of 1974 (SDWA) ensures that most Americans are provided access to water that meets established public health standards. However, for over 38 million Americans who rely on private wells or other drinking water not protected by the SDWA (herein referred to as private wells), that is not the case. There is no comprehensive knowledge about the locations of private wells, the populations served by these sources, potential contaminants that might be present in private well water in specific areas of the country, or the potential health risks associated with drinking water from these sources.

The purpose of this Generic Information Collection Request (Generic ICR) is to assess the health risks associated with exposure to contaminants in drinking water from private wells across varied geographic areas of the United States in partnership with the requesting agency (state, territorial, local, or tribal health department). The information obtained from these investigations will be used to describe health risks from exposure to contaminants in drinking water from private wells within a defined time period and geographic distribution. This information will be used to inform public health protection activities conducted by the requesting agencies.

The respondents are defined as adults at least 18 years old, who use private wells for drinking water, who are willing to receive and return a tap water sampling kit and urine specimen kit or to provide a blood specimen, and who are willing to answer survey questions. They will be recruited from geographic areas of interest as defined by the requesting agency. Based on our historical activities, we estimate that CDC will conduct up to 10 investigations per year. Each investigation will involve on average 200 respondents. The total time burden is 2,084 hours. There will be no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Adults at least 18 years old using a private well for tap water. | Screening Form | 2,500 | 1 | 6/60 | 250 |
| | Questionnaire | 2,000 | 1 | 35/60 | 1,167 |
| | Urine Specimen and Tap Water Sample Collection. | 2,000 | 1 | 20/60 | 667 |
| Total | | | | | 2,084 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–20086 Filed 9–16–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–460]**

### 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 October 17, 2019.

**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 following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. 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:* Reinstatement of a previously approved collection*; Title of Information Collection:* Medicare Participation Agreement for Physicians and Suppliers*; Use:* Section 1842(h) of the Social Security Act permits physicians and suppliers to voluntarily participate in Medicare Part B by agreeing to take assignment on all claims for services to Medicare beneficiaries. The law also requires that the Secretary provide specific benefits to the physicians, suppliers and other persons who choose to participate. The CMS–460 is the agreement by which the physician or supplier elects to participate in Medicare. By signing the agreement to participate in Medicare, the physician, supplier, or their authorized official agrees to accept the Medicare-determined payment for Medicare covered services as payment in full and to charge the Medicare Part B beneficiary no more than the applicable deductible or coinsurance for the covered services. For purposes of this explanation, the term ''supplier'' means certain other persons or entities, other than physicians, that may bill Medicare for Part B services (*e.g.,* suppliers of diagnostic tests, suppliers of radiology services, durable medical suppliers (DME) suppliers, nurse practitioners, clinical social workers, physician assistants). Institutions that render Part B services in their outpatient department are not considered ''suppliers'' for purposes of this agreement. *Form Number:* CMS–460*(OMB control number:* 0938–0373*); Frequency:* Yearly*; Affected Public:* Private Sector (business or other for-profits)*; Number of Respondents:* 29,000*; Total Annual Responses:* 29,000*; Total Annual Hours:* 7,250. *(For policy questions regarding this collection contact* Mark Baldwin at 410–786–8139.*)*

Dated: September 10, 2019.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2019–19898 Filed 9–16–19; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10088]**

### Agency Information Collection Activities: Proposed Collection; 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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by November 18, 2019.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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 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 N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

*CMS–10088 Notification of FLS and CMS of Co-Located Medicare Providers*

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 requires federal agencies to publish a 60-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.

**Information Collection**

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Notification of FLS and CMS of Co-Located Medicare Providers; *Use:* Many long-term care hospitals (LTCHs) are co-located with other Medicare providers (acute care hospitals, inpatient rehabilitation facilities (IRFs), skilled nursing facilities (SNFs), inpatient psychiatric facilities (IPFs)), which could lead to potential gaming of the Medicare system based on inappropriate patient shifting. In regulations at 42 CFR 412.22(e)(3) and (h)(6) CMS requires LTCHs to notify

Medicare Administrative Contractors (MACs) and CMS of co-located providers. The requirement regarding collection of information at § 412.22 concerning a LTCH's (or a LTCH satellite's) notification to its MAC and CMS of its co-located status is needed in order for Medicare to appropriately pay co-located hospitals-within-hospitals (HwHs) and satellites. Under §§ 412.22(e)(3) and (h)(6), an LTCH or a satellite of an LTCH that occupies space in a building used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital must notify its MAC and CMS in writing of its co-location within 60 days of its first cost reporting period that began on or after October 1, 2002. *Form Number:* CMS–10088 (OMB control number: 0938–0897); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profit, not-for-profit institutions); *Number of Respondents:* 25; *Total Annual Responses:* 25; *Total Annual Hours:* 6. (For policy questions regarding this collection contact Emily Lipkin at 410–786–3633.)

Dated: September 10, 2019.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2019–19894 Filed 9–16–19; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Assessing the Implementation and Cost of High Quality Early Care and Education: Field Test (0970–0499)

**AGENCY:** Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** This information request is part of the project, Assessing the Implementation and Cost of High Quality Early Care and Education (ECE–ICHQ). The project's goal is to create a technically sound and feasible instrument that will provide consistent, systematic measures of the implementation and costs of education and care in center-based settings that serve children from birth to age 5. The resulting measures will inform research, policy, and practice by improving understanding of variations in what centers do to support quality, their associated costs, and how resources for ECE may be better aligned with expectations for quality.

**DATES:** *Comments due within 30 days of publication.* 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.

**ADDRESSES:** 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.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to collect new information to use in testing measures of the implementation and costs of high quality early care and education. This information collection is part of the project, Assessing the Implementation and Cost of High Quality Early Care and Education (ECE–ICHQ). The project's goal is to create a technically sound and feasible instrument that will provide consistent, systematic measures of the implementation and costs of education and care in center-based settings that serve children from birth to age 5. The resulting measures will inform research, policy, and practice by improving understanding of variations in what centers do to support quality, their associated costs, and how resources for ECE may be better aligned with expectations for quality.

The goals of the study are (1) to test and refine a data collection approach to gather information about implementation activities and costs of key functions within ECE centers and (2) to develop new measures of implementation and costs for use together in understanding ways to support quality. The study has completed two phases of data collection to develop the data collection tools and measures. The study team collected data through on-site visits to 15 centers as part of an initial phase of data collection to pre-test information collections (data collected under clearance #0970–0355). A second phase (OMB #0970–0499) relied on remote data collection through an electronic cost workbook, telephone interviews, and web-based surveys to gather information from 30 centers in three states to develop preliminary measures of implementation and cost and further reduced and refined the data collection tools.

This proposed new information collection is focused on a field test of the measures to assess the psychometric properties of the implementation measures and to examine the associations between measures of implementation, cost, and quality. The field test will include a mix of remote and on-site data collection.

*Respondents:* ECE site administrators or center directors, program directors, education specialists, financial managers or accountants, teachers, and aides.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Center recruitment call *(to gain participation; assumes outreach to 10 centers for every 1 center needed):* | | | | |
| Center director | 800 | 1 | .33 | 264 |
| Umbrella organization administrator | 75 | 1 | .33 | 25 |
| Center engagement call *(to gather basic characteristics and plan steps for participation; assumes 20% may withdraw after this step)* | 100 | 1 | .50 | 50 |

ANNUAL BURDEN ESTIMATES—Continued

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Implementation interview protocol: | | | | |
| Center director | 80 | 1 | 3 | 240 |
| Additional center staff | 20 | 1 | 3 | 60 |
| Electronic cost workbook | 80 | 1 | 8 | 640 |
| Staff rosters for time use survey | 80 | 1 | .25 | 20 |
| Time-use survey | 1,120 | 1 | .25 | 280 |
| Classroom rosters for observations | 80 | 1 | .50 | 40 |
| Total Burden | | | | 1,619 |

**Authority:** Social Security Act § 418 as extended by the Continuing Appropriations Act of 2017 and the TANF Extension Act of 2019.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2019–20115 Filed 9–16–19; 8:45 am]

**BILLING CODE 4184–23–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–D–3324]**

### Reconditioning of Fish and Fishery Products by Segregation: Guidance for Industry; Draft Guidance: Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Reconditioning of Fish and Fishery Products by Segregation.'' The draft guidance, when finalized, will provide industry with an explanation of two potential approaches to recondition fish and fishery products by effectively segregating adulterated portions of an article from portions not containing the adulterant to ensure that only safe and wholesome product reaches consumers.

**DATES:** Submit either electronic or written comments on the draft guidance by November 18, 2019 to ensure that we consider your comment on the draft guidance before we begin 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–2019–D–3324 for ''Reconditioning of Fish and Fishery Products by Segregation.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://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 Seafood Safety, Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:** Steven Bloodgood, Division of Seafood Safety, Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, (240) 402–5316.

**SUPPLEMENTARY INFORMATION:**

## I. Background

We are announcing the availability of a draft guidance for industry entitled ''Reconditioning of Fish and Fishery Products by Segregation.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of the FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

The draft guidance is intended to help owners of fish and fishery products, or their representatives, interested in bringing adulterated products into compliance with the Federal Food, Drug, and Cosmetic Act by means of segregating non-violative product from adulterated product. Specifically, this document provides guidance on:

- Segregation based on a production-related rationale supported by production records or information identifying the cause of the adulteration along with sampling and testing to confirm that the segregation was successful; or
- segregation based on the results of statistically significant sampling and testing.

## II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Regulatory Information/Guidances/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

## III. Paperwork Reduction Act of 1995

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 1.94(b) and 21 CFR 1.95(a) and (b) using Form FDA 766 have been approved under OMB control number 0910–0025.

Dated: September 9, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–20037 Filed 9–16–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–D–0369]**

### Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

**DATES:** Submit either electronic or written comments on the draft guidances by November 18, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)). Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

**FOR FURTHER INFORMATION CONTACT:** Wendy Good, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 240–402–1146.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on May 16, 2019. This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

## II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

| |
|---|
| Acyclovir |
| Amantadine hydrochloride |
| Amoxicillin; Clavulanate potassium |
| Avatrombopag maleate |
| Baloxavir marboxil |
| Baricitinib |
| Benztropine mesylate |
| Chenodiol |
| Chlordiazepoxide hydrochloride |
| Chlorpheniramine maleate |
| Chlorpromazine hydrochloride |
| Chlorthalidone |
| Clemastine fumarate (multiple reference listed drugs) |
| Duvelisib |
| Fexofenadine hydrochloride |
| Fluorometholone acetate |
| Fluticasone propionate; Salmeterol xinafoate |
| Fostamatinib disodium |
| Glycopyrronium tosylate |
| Hydrogen peroxide |
| Hydroxyprogesterone caproate |
| Ibrutinib |
| Ketoprofen |
| Lamivudine; Tenofovir disoproxil fumarate |
| Levetiracetam |
| Lofexidine hydrochloride |
| Loteprednol etabonate (multiple reference listed drugs) |
| Lovastatin |
| Plazomicin sulfate |
| Sarecycline hydrochloride |
| Tecovirimat |
| Thioridazine hydrochloride |

## III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

| |
|---|
| Acyclovir |
| Armodafinil |
| Bosutinib monohydrate |
| Budesonide |
| Chlorthalidone |
| Colesevelam hydrochloride |
| Dantrolene sodium |
| Diphenhydramine citrate; Ibuprofen |
| Duloxetine hydrochloride |
| Fingolimod hydrochloride |
| Mesalamine |
| Metronidazole (multiple reference listed drugs) |
| Plecanatide |
| Sucralfate |
| Tretinoin |

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

## IV. Electronic Access

Persons with access to the internet may obtain the draft guidances at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: September 11, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–20108 Filed 9–16–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Health and Human Services (HHS) announces the next meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 (Committee) regarding the development of national health promotion and disease prevention objectives for 2030. The meeting will be held online via webinar and is open to the public. The Committee will discuss the nation's proposed health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will discuss the role of data partnerships and deliberate recommendations for establishing data partnerships for implementing and achieving the Healthy People 2030 objectives. Pursuant to the Committee's charter, the Committee's advice must assist the Secretary in reducing the number of objectives while ensuring that the selection criteria identifies the most critical public health issues that are high-impact priorities supported by current national data.

**DATES:** The Committee will meet on October 2, 2019, from 11:00 a.m. to 1:00 p.m. Eastern Time (ET).

**ADDRESSES:** The meeting will be held online via webinar. Registration for the October 2, 2019 meeting will open on September 16, 2019 at the Healthy People website at *http://www.healthypeople.gov.*

**FOR FURTHER INFORMATION CONTACT:** Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852, (240) 453–8280 (telephone). Additional information is available on the Healthy People website at *http://www.healthypeople.gov.*

**SUPPLEMENTARY INFORMATION:** The names and biographies of the Committee members are available at *https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee.*

*Purpose of Meeting:* Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with new knowledge of current data, trends, and innovations, to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2030 objectives will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention. During the October 2, 2019 Committee meeting, the Committee will discuss the role of data partnerships and deliberate recommendations for establishing data partnerships designed to implement and achieve the Healthy People 2030 objectives.

*Public Participation at Meeting:* Members of the public are invited to join the online Committee meeting. There will be no opportunity for oral public comments during the online Committee meeting. Written comments are welcome throughout the entire development process of the national health promotion and disease prevention objectives for 2030 and may be emailed to *HP2030@hhs.gov.*

To join the Committee meeting, individuals must pre-register at the Healthy People website at *http://www.healthypeople.gov.* Participation in the meeting is limited. Registrations will be accepted until maximum webinar capacity is reached. Registration for the October 2, 2019 meeting must be completed by 9:00 a.m. ET on October 2, 2019. A waiting list will be maintained should registrations exceed capacity, and individuals on the waiting list will be contacted as additional space for the meeting becomes available. Registration questions may be directed to *HealthyPeople@norc.org.*

*Authority:* 42 U.S.C. 300u and 42 U.S.C. 217a. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: September 5, 2019.

**Donald Wright,**

*Deputy Assistant Secretary for Health, Disease Prevention and Health Promotion.*

[FR Doc. 2019–20095 Filed 9–16–19; 8:45 am]

**BILLING CODE 4150–32–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee

*Date:* October 16–18, 2019.

*Time:* 6:00 p.m. to 10:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301)594–7637 *davila-bloomm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

*Date:* October 23–25, 2019.

*Time:* 5:30 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.

*Contact Person:* John F. Connaughton, Ph.D., Chief, Scientific Review Branch Review Branch, DEA, NIDDK, National

Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301)594–7797, *connaughtonj@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Groupl; Kidney, Urologic and Hematologic Diseases D Subcommittee

*Date:* October 29–31, 2019.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

*Contact Person:* Barbara A. Woynarowska, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301)402–7172, *woynarowskab@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20030 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Advancing Translational Sciences Special Emphasis Panel; Conference Grants Review.

*Date:* November 6, 2019.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jing Chen, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4874, *chenjing@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20032 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Clinical Neuroscience and Neurodegeneration.

*Date:* October 16, 2019.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Infectious, Reproductive, Asthma and Pulmonary Conditions.

*Date:* October 17, 2019.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@csr.nih.gov*.

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

*Date:* October 21–22, 2019.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Dana on Mission Bay, 1710 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov*.

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

*Date:* October 21–22, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

*Contact Person:* Angela Y. Ng, MBA, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov*.

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

*Date:* October 21–22, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites—Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

*Contact Person:* Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

*Date:* October 21, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

*Contact Person:* Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–806–2515, *chatterm@csr.nih.gov*.

*Name of Committee:* Cell Biology Integrated Review Group; Biology of the Visual System Study Section.

*Date:* October 21–22, 2019.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michael H. Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*.

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

*Date:* October 21–22, 2019.

*Time:* 8:30 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20026 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Aging.

*Date:* September 8–9, 2020.

*Closed:* September 08, 2020, 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Open:* September 09, 2020, 8:00 a.m. to 1:00 p.m.

*Agenda:* Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

*Place:* National Institutes of Health Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Robin Barr, Ph.D., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301)496–9322, *barrr@nia.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/about/naca,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20028 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

*Date:* October 10, 2019.

*Time:* 8:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

*Contact Person:* Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6830, *unja.hayes@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Psychosocial Risk and Disease Prevention (PRDP).

*Date:* October 10, 2019.

*Time:* 3:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

*Contact Person:* Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Shared Instrumentation for Genomics Research

*Date:* October 15, 2019.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9448, *shinako.takada@nih.gov*.

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

*Date:* October 16–17, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892, (301) 402–6297, *pileggia@csr.nih.gov*.

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

*Date:* October 16, 2019.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Guoqin Yu, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1276, *guoqin.yu@nih.gov*.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

*Date:* October 16–17, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: International Research Ethics Education and Curriculum Development.

*Date:* October 16, 2019.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Bioengineering Research Partnerships (U01 Clinical Trial Optional).

*Date:* October 16, 2019.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Urology and Urogynecology

*Date:* October 16–17, 2019.

*Time:* 11:00 a.m. to 9:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Julia Spencer Barthold, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–3073, *julia.barthold@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Genetic Variation and Evolution.

*Date:* October 16, 2019.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cellular Aspects of Diabetes and Obesity.

*Date:* October 16, 2019.

*Time:* 1:00 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301–435–2514, *riverase@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences, Biomedical Imaging, and Bioengineering.

*Date:* October 16, 2019.

*Time:* 1:30 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20051 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Integrative Health Special Emphasis Panel; NCCIH Training and Education Review Panel (CT).

*Date:* November 12–13, 2019.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jessica Marie McKlveen, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH 6707, Democracy Boulevard, Suite 401, Bethesda, MD 20892–547, *jessica.mcklveen@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20027 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Limited Competition Cohort Studies of HIV/AIDS and Substance Abuse (U01 Clinical Trial Not Allowed)

*Date:* October 1, 2019.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550 Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; (T32) Ruth L. Kirschstein National Research Service Award (NRSA) Institutional Research Training Grants.

*Date:* November 6–7, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Susan O McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Limited Competition for Adolescent Brain Cognitive Development (ABCD) Study—Linked Research Project Sites (Collaborative U01 Clinical Trial Not Allowed).

*Date:* November 8, 2019.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Cambria Hotel Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

*Contact Person:* Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH/DHHS, 6001 Executive Blvd., Rm. 4234, Bethesda, MD 20892, 301–402–7371, *yvonne.ferguson@nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Limited Competition for Adolescent Brain Cognitive Development (ABCD) Study—Data Analysis, Informatics and Resource Center & Coordinating Center (U24 Clinical Trial Not Allowed).

*Date:* November 8, 2019.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Cambria Hotel Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

*Contact Person:* Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH/DHHS, 6001 Executive Blvd., Rm. 4234, Bethesda, MD 20892, 301–402–7371, *yvonne.ferguson@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20050 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change for the meeting of the Developmental Biology Subcommittee, October 03, 2019, 8:00 a.m. to 5:00 p.m., Embassy Suites—Chevy Chase Pavilion, which was published in the **Federal Register** on August 19, 2019, 84 FR 42936.

The name of the meeting has been corrected. The meeting is closed to the public.

Dated: September 11, 2019.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20029 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Neuroimmune Interactions and Neuroinflammation.

*Date:* October 16, 2019.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, (301) 537–9986, *macarthurlh@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Hypersensitivity, Allergies and Mucosal Immunology.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *alok.mulky@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Interdisciplinary Molecular Sciences and Training.

*Date:* October 17, 2019.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer,

Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–4809, *lystranne.maynard-smith@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences and Technologies.

*Date:* October 17, 2019.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Integrative Nutrition and Metabolic Processes Study Section.

*Date:* October 17, 2019.

*Time:* 4:00 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–2514, *riverase@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: High Throughput Screening.

*Date:* October 18, 2019.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, (301) 435–2902, *filpuladr@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Global Infectious Disease Training Program.

*Date:* October 18, 2019.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, (301) 827–2372, *tamara.mcnealy@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Molecular Profiles and Biomarkers of Food and Nutrient Intake.

*Date:* October 18, 2019.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–19–264: Imaging, Biomarkers and Digital Pathomics for the Early Detection of Premetastatic Aggressive Cancer (R01).

*Date:* October 18, 2019.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1744, *lixiang@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Research Enhancement Award R15.

*Date:* October 18, 2019.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1784, *gorshkoi@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–NS18–018 Brain Initiative: Biology and Biophysics of Neural Stimulation.

*Date:* October 18, 2019.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham Grand Chicago Riverfront, 71 E Wacker Dr, Chicago, IL 60601.

*Contact Person:* Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, (301) 237–1487, *lowss@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20025 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

*Date:* October 16, 2019.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

*Name of Committee:* Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC, 7808 Bethesda, MD 20892, (301) 408–9519, *burchjb@csr.nih.gov*.

*Name of Committee:* Cell Biology Integrated Review Group; Development—1 Study Section.

*Date:* October 17, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7840, Bethesda, MD 20892, (301) 435–1175, *berestm@mail.nih.gov*.

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group;

Social Psychology, Personality and Interpersonal Processes Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

*Contact Person:* Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov*.

*Name of Committee:* Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

*Contact Person:* Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207, MSC 7812, Bethesda, MD 20892, (301) 435–1238, *hodged@mail.nih.gov*.

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

*Date:* October 17, 2019.

*Time:* 8:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Lord Baltimore Hotel, 20 W Baltimore Street, Baltimore, MD 21201.

*Contact Person:* Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, (301) 435–1235, *geoffreys@csr.nih.gov*.

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group; Health Disparities and Equity Promotion Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Kimpton Lorien Hotel, 1600 King Street, Alexandria, VA 22314.

*Contact Person:* Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, (301) 827–4446, *bellingerjd@csr.nih.gov*.

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1744 *lixiang@csr.nih.gov*.

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

*Contact Person:* Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, (301) 594–7945, *smileyja@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Warwick Allerton-Chicago 701 N Michigan Avenue Chicago, IL 60611.

*Contact Person:* Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1260, *borzanj@csr.nih.gov*.

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Torrance Marriott Redondo Beach, 3635 Fashion Way, Torrance, CA 90503.

*Contact Person:* Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, (301) 435–1777, *moongabs@mail.nih.gov*.

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, (301) 435–0903, *saadisoh@csr.nih.gov*.

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.

*Date:* October 17–18, 2019.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

*Contact Person:* Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *hfriedman@csr.nih.gov*.

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

*Date:* October 17–18, 2019.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 755–4335, *greg.shelness@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20024 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; NIMH Research Education Applications (R25).

*Date:* October 11, 2019.

*Time:* 12:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov*.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Pharma/Device Early Phase Clinical Trials.

*Date:* October 22, 2019.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892, 301–443–7861, *dsommers@mail.nih.gov*.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; NIMH Biobehavioral Research Awards for Innovative New Scientists (NIMH BRAINS).

*Date:* October 31, 2019.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, NSC 6152B, Bethesda, MD 20892, 301–402–8152, *erin.gray@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 11, 2019.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–20031 Filed 9–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1173]**

## Certain Rotating 3–D LiDAR Devices, Components Thereof, and Sensing Systems Containing the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 15, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Velodyne Lidar, Inc. of San Jose, California. A supplement was filed on August 28, 2019. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rotating 3–D LiDAR devices, components thereof, and sensing systems containing the same by reason of infringement of certain claims of U.S. Patent No. 7,969,558 (''the '558 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

**SUPPLEMENTARY INFORMATION:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on September 10, 2019, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4 and 6–25 of the '558 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''(a) rotating 3–D LiDAR devices, (b) components thereof, and (c) sensing systems containing the same'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Velodyne Lidar, Inc., 5521 Hellyer Avenue, San Jose, CA 95138

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hesai Photonics Technology Co., Ltd., Building L2 Hongqiao World Center, 1588Zhuguang Rd., Qingpu Dist., Shanghai, 201702 China

Suteng Innovation Technology Co., Ltd., (a.k.a. RoboSense), RoboSense Building, Block 1, South of Zhongguan Honghualing Industrial District, No. 1213 Liuxian Avenue, Taoyuan Street, Nanshan District, Shenzhen, Guangdong, 518000, China.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 11, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–20023 Filed 9–16–19; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On August 23, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Middle District of Florida in the lawsuit entitled *United States of America* v. *Southeastern Grocers, Inc., BI–LO, LLC, and Winn-Dixie Stores, Inc.*, Civil Action No. 3:19–cv–00988–MMH–MCR.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for violations of the regulations governing the service and repair of commercial refrigeration appliances that use ozone-depleting refrigerant and for violations of the recording keeping regulations. The consent decree requires Defendants to perform injunctive relief related to refrigeration equipment at approximately 576 stores and pay a $300,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Southeastern Grocers, Inc., BI–LO, LLC, and Winn-Dixie Stores, Inc.*, D.J. Ref. No. 90–5–2–1–11839. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $20.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendix and signature pages, the cost is $11.00.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2019–20001 Filed 9–16–19; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Data Users Advisory Committee; Request for Nominations

**AGENCY:** Bureau of Labor Statistics (BLS), Department of Labor.

**ACTION:** Request for nominations to the BLS Data Users Advisory Committee.

**SUMMARY:** The BLS is soliciting new members for its Data Users Advisory Committee (DUAC). The current membership expired on January 15, 2018. The DUAC provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on matters related to the analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on gaps between or the need for new Bureau statistics. The Committee will consist of 20 members and will be chosen from a cross-section of individuals who represent a balance of expertise across a broad range of BLS program areas, including employment and unemployment statistics, occupational safety and health statistics, compensation measures, price indexes, and productivity measures; or other areas related to the subject matter of BLS programs. BLS invites persons interested in serving on the DUAC to submit their names for consideration for committee membership.

**DATES:** Nominations for the DUAC membership should be postmarked October 17, 2019.

**ADDRESSES:** Nominations for the DUAC membership should be sent to: Commissioner William W. Beach, U.S. Bureau of Labor Statistics, 2 Massachusetts Avenue NE, Room 4040, Washington, DC 20212, or as email attachments to *DUACnominations@bls.gov*. If submitting electronically, please submit in Word or PDF format.

**FOR FURTHER INFORMATION CONTACT:** Kathy Mele, Deputy Associate Commissioner, U.S. Bureau of Labor Statistics, 2 Massachusetts Avenue NE, Office of Publications and Special Studies, Room 2850. Washington, DC 20212. Telephone: (202)691–6102. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** BLS intends to renew membership in the DUAC for another three years. The BLS operates over two dozen surveys that measure employment and unemployment, compensation, worker safety, productivity, and consumer and producer price movements. BLS provides a wealth of economic data and analyses to support public and private decision making. The DUAC was established to provide advice to the Commissioner of Labor Statistics on the priorities of data users, suggestions concerning the addition of new programs, changes in emphasis of existing programs or cessation of obsolete programs, and advice on potential innovations in data analysis, dissemination, and presentation.

*Nominations:* BLS is looking for committed DUAC members who have a strong interest in, and familiarity with, BLS data. The Agency is looking for nominees who use and have a comprehensive understanding of economic statistics. The U.S. Bureau of Labor Statistics is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, gender, age, and disabilities are encouraged to apply. Interested persons may nominate themselves or may submit the name of another person who they believe to be interested in and qualified to serve on the DUAC. Nominations may also be submitted by organizations. Nominations should include the name, address, and

telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to BLS data specifically, or economic statistics more generally. BLS will conduct a basic background check of candidates before their appointment to the DUAC. The background check will involve accessing publicly available, internet-based sources.

*Authority:* This notice was prepared in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, the Secretary of Labor has determined that the Bureau of Labor Statistics Data Users Advisory Committee is in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. 1 and 2. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Signed at Washington, DC, this 11th day of September 2019.

**Mark Staniorski,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2019–20022 Filed 9–16–19; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0028]**

### MET Laboratories, Inc.: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for MET Laboratories, Inc., as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces the addition of one test standard to the NRTL Program's List of Appropriate Test Standards.

**DATES:** The expansion of the scope of recognition becomes effective on September 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

**SUPPLEMENTARY INFORMATION:**

#### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of MET Laboratories, Inc. (MET), as a NRTL. MET's expansion covers the addition of one test standard to its scope of recognition. Additionally, OSHA announces the addition of one test standard to the NRTL Program's List of Appropriate Test Standards.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET submitted an application, dated November 8, 2016 (OSHA–2006–0028–0041), to expand its recognition to include four additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA previously published a **Federal Register** notice (83 FR 5813) on February 9, 2018, announcing this application, but referenced one of the four standards as being recognized by OSHA when that standard is not currently included in the NRTL Program's List of Appropriate Test Standards. OSHA further published a **Federal Register** notice (83 FR 22291) granting recognition for three of the four additional standards requested in the application. This notice corrects the error in the previous **Federal Register** notice for the one remaining standard.

OSHA published the preliminary notice announcing MET's expansion application and proposed addition to the NRTL List of Appropriate Test Standards in the **Federal Register** on March 12, 2019 (84 FR 8900). The agency requested comments by March 27, 2019, and it received one comment (OSHA–2006–0028–0053) in response to this notice. This comment did not require a response from the agency. OSHA now is proceeding with this final notice to grant expansion of MET's scope of recognition.

To obtain or review copies of all public documents pertaining to MET's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2006–0028 contains all materials in the record concerning MET's recognition.

#### II. Final Decision and Order

OSHA staff examined MET's expansion application, the capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for expansion of the recognition, subject to the specified limitation and conditions listed. OSHA, therefore, is proceeding with this final notice to grant expansion of MET's scope of recognition. OSHA limits the expansion of MET's scope of recognition to testing and certification of products for demonstration of conformance to the test standard listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARD FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 61010–2–020 | Safety Requirements for Electrical Equipment Measurement, Control and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges. |

In this notice, OSHA also announces the addition of a new test standard to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standard that is new to the NRTL Program. OSHA has determined that this test standard is an appropriate test standard and will include it in the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARD OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

| Test standard | Test standard title |
|---|---|
| UL 61010–2–020 | Safety Requirements for Electrical Equipment Measurement, Control and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the designation of the standards-developing organization for the standard as opposed to the ANSI designation may be used. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, MET must abide by the following conditions of the recognition:

1. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in the operations as a NRTL, and provide details of the change(s);

2. MET must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and

3. MET must continue to meet the requirements for recognition, including all previously published conditions on MET's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of MET, subject to the limitation and conditions specified above. OSHA also adds one new test standard to the NRTL Program's List of Appropriate Test Standards.

### III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 11, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–20019 Filed 9–16–19; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2013–0017]**

## QAI Laboratories, Ltd.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for QAI Laboratories, Ltd., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on September 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

**SUPPLEMENTARY INFORMATION:**

### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of QAI Laboratories, Ltd. (QAI), as a NRTL. QAI's expansion covers the addition of ten test standards to its scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register**in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

QAI submitted an application, dated August 4, 2017 (OSHA–2013–0017–0009), to expand their scope of recognition to include ten additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application. OSHA published the preliminary notice announcing QAI's expansion application in the **Federal Register** on May 15, 2019 (84 FR 21832). The agency requested comments by May 30, 2019, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of QAI's scope of recognition.

To obtain or review copies of all public documents pertaining to the QAI's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration. Docket No. OSHA–2013–0017 contains all materials in the record concerning QAI's recognition.

## II. Final Decision and Order

OSHA staff examined QAI's expansion application, the capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that QAI meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant the expansion of QAI's scope of recognition. OSHA limits the expansion of QAI's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN QAI'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 50 | Enclosures for Electrical Equipment, Non-Environmental Considerations. |
| UL 50E | Enclosures for Electrical Equipment, Environmental Considerations. |
| UL 467 | Grounding and Bonding Equipment. |
| UL 962A | Standard for Furniture Power Distribution Units. |
| UL 1012 | Standard for Power Units Other Than Class 2. |
| UL 1310 | Standard for Class 2 Power Units. |
| UL 1573 | Standard for Stage and Studio Luminaires and Connector Strips. |
| UL 1951 | Standard for Electric Plumbing Accessories. |
| UL 60950–21 | Information Technology Equipment—Safety—Part 21: Remote Power Feeding. |
| UL 60950–23 | Information Technology Equipment—Safety—Part 23: Large Data Storage Equipment. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the designation of the standards-developing organization for the standard as opposed to the ANSI designation may be used. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, QAI must abide by the following conditions of the recognition:

1. QAI must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in the operations as a NRTL, and provide details of the change(s);

2. QAI must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and

3. QAI must continue to meet the requirements for recognition, including all previously published conditions on QAI's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of QAI, subject to the limitation and conditions specified above.

## III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 11, 2019.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–20020 Filed 9–16–19; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Veterans' Employment and Training Service

### Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

**AGENCY:** Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at 202–693–4734.

Individuals who will need an accommodation for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, October 11, 2019 by contacting Mr. Gregory Green at 202–693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

**DATE AND TIME:** Tuesday, October 15, 2019 beginning at 9:00 a.m. and ending at approximately 4:30 p.m. (EST).

**ADDRESSES:** The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210, Conference Room N–4437 A, B & C. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

*Security Instructions:* Meeting participants should use the visitor's entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).

3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.

4. Laptops and other electronic devices may be inspected and logged for identification purposes.

5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

*Notice of Intent To Attend the Meeting:* All meeting participants should submit a notice of intent to attend by Friday, October 11, 2019, via email to Mr. Gregory Green at *green.gregory.b@dol.gov,* subject line ''October 2019 ACVETEO Meeting.''

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory Green, Designated Federal Official for the ACVETEO, (202) 693–4734.

**SUPPLEMENTARY INFORMATION:** The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

### Agenda

9:00 a.m. Welcome and remarks, Sam Shellenberger, Acting Assistant Secretary, Veterans' Employment and Training Service

9:05 a.m. Administrative Business, Gregory Green, Designated Federal Official

9:15 a.m. Subcommittees Breakout Sessions

12:00 a.m. Lunch

1:00 p.m. Subcommittees Breakout Sessions Continue

3:45 p.m. Subcommittee Assignments, Eric Eversole, Committee Chairman

4:00 p.m. Public Forum, Gregory Green, Designated Federal Official

4:30 p.m. Adjourn

Signed in Washington, DC, this 10th day of September 2019.

**Joseph S. Shellenberger,**

*Acting Assistant Secretary, Veterans' Employment and Training Service.*

[FR Doc. 2019–20015 Filed 9–16–19; 8:45 am]

**BILLING CODE 4510–79–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–19–0012; NARA–2019–037]**

## Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

**DATES:** NARA must receive comments by November 1, 2019.

**ADDRESSES:** You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

**SUPPLEMENTARY INFORMATION:**

### Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov*

docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. You may request additional information about the disposition process through the contact information listed above.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

**Background**

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

**Schedules Pending**

1. Department of the Air Force, Agency-wide, Deployment Records (DAA–AFU–2019–0014).

2. Department of Homeland Security, Transportation Security Administration, Liaison Operations (DAA–0560–2019–0007).

3. Department of Labor, Office of Workers' Compensation Programs, Records of the Division of Coal Mineworkers' Compensation (DAA–0271–2017–0004).

4. Commodity Futures Trading Commission, Agency-wide, Administrative Records (DAA–0180–2018–0005).

5. Commodity Futures Trading Commission, Agency-wide, Derivatives Oversight and Compliance (DAA–0180–2019–0001).

**Laurence Brewer,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2019–20074 Filed 9–16–19; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit modification request.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. This is the required notice of a requested permit modification.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 17, 2019. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

1. *Description of Permit Modification Requested:* The Foundation issued a permit (ACA 2018–013) to Linnea Pearson on October 16, 2017. The issued permit allows the permit holder to handle Weddell seal pups per year for the purposes of studying the thermoregulatory strategies by which the pups maintain euthermia in air and in water and examine the development of diving capability as the animals prepare for independent foraging. Each of the ten seal pups, separated into two cohorts of five each, were to be handled at four time points between one and eight weeks of age. Flipper-mounted ime/depth recorder tags were to be attached to 1-week-old seal pups and removed from the pups at 7–8 weeks of age. At the 3-week time point, accelerometer tags were to be attached to the dorsal pelage of the pups and then removed at 7–8 weeks of age. VHF radio transmitters were allowed to be attached to the seal pups dorsal, caudal pelage after molting. The collection of a single whisker by plucking from each seal pup was allowed at 7–8 weeks of age. Protocols not requiring sedation (mass, morphometrics, core and surface temperatures, metabolic rates) and protocols requiring anesthesia (body composition, biopsies, blood volume analysis) were to be conducted on the first cohort of five pups at all four time points. The sedative midazolam was to be used alone on 1-week-old pups in the first cohort, while a combination of midazolam and butorphanol was

allowed for use in the first cohort at 3, 5, and 7–8 weeks of age time points. A combination of midazolam and ketamine could have been used on 7–8-week-old pups, if deemed necessary. Metabolic and morphometric measurements were to be conducted on a second, separate cohort of five pups at each of the four time points. Sedation of seal pups in the second cohort, with a combination of midazolam and butorphanol, was only allowed for study animals at 3 weeks of age for the purposes of attaching an accelerometer tag. The permit holder was also allowed to conduct behavioral observations, imaging, and may disturb up to 350 Weddell seals. An additional seven Weddell seal pups, 15 Weddell seal adult females, and 20 crabeater seals were allowed to be disturbed during procedures on study animals. Up to two pup mortalities were requested per year, not to exceed three over the course of two field seasons. The permit holder was also allowed to collect tissues from Weddell seals (any age or gender) found dead from natural causes.

Now the applicant proposes a modification to the permit to allow the following: Sedation of all seal pups at all time points using midazolam with or without butorphanol (and continue to have the option of using midazolam in combination with ketamine at 7–8 weeks of age); collection of blood samples from seal pups in the second cohort, at all four time points, while the pups are under sedation; use of a cannulated biopsy needle for muscle tissue sampling of seal pups in the first cohort (rather than a dermal biopsy punch), at all four time points; attachment of a flipper-mounted VHF transmitter tag to seal pups in both cohorts at 3 weeks of age, on the flipper opposite the one with the time/depth tag attached, with removal at the final time point; attachment of accelerometer tags to the dorsal pelage of 1-week-old pups in both cohorts with removal of the tags at 3 weeks of age; administration of antibiotics to treat local or systemic infections in seal pups involved in the study; collection of rectal, vaginal, prepucial, nasal, lingual, buccal swab, as well as superficial lingual epithelial scrapes of all pups at all times points; and increased takes of seal pups and adult females such that a total of 12 pups would be handled for study purposes compared with 10 in the original permit (six pups in each cohort compared with five in the original permit) and a total of 12 adult females, the mothers of the pups, would be disturbed during the handling of the pups (10 in the original permit). The permit holder has also requested a modification of NMFS Permit No. 21006.

*Location:* Erebus Bay, McMurdo Sound; ASPA 121, Cape Royds.

*Dates of Permitted Activities:* October 1, 2019–September 30, 2020.

**Erika N. Davis,**

*Program Specialist, Office of Polar Programs.*

[FR Doc. 2019–20089 Filed 9–16–19; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code*: Committee on Equal Opportunities in Science and Engineering (CEOSE) Advisory Committee Meeting (#1173).

*Date and Time:* October 17, 2019 1:00 p.m.–5:30 p.m. October 18, 2019 8:30 a.m.–3:30 p.m.

*Place:* National Science Foundation (NSF), 2415 Eisenhower Avenue, Alexandria, VA 22314.

To help facilitate your entry into the building, please contact Una Alford (*ualford@nsf.gov* or 703–292–7111) on or prior to October 15, 2019.

*Type of Meeting:* Open.

*Contact Person:* Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Contact Information: 703–292–8040/*banderso@nsf.gov.*

*Minutes:* Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

*Purpose of Meeting:* To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

*Agenda:*

- Opening Statement and Chair Report by the CEOSE Chair
- NSF Executive Liaison Report
- Video Briefing: NSF INCLUDES Alliances
- Presentation: Leveraging Broadening Participation to Advance Research Impacts in Society
- Panel: Deans' Leadership Roundtable
- Discussion: Topics for Discussion with NSF Leadership
- Panel: Large-Scale Investments for the Advancement of Persons with Disabilities in STEM
- Meeting with NSF Chief Operating Officer
- Reports and Updates from the CEOSE Liaisons and the Federal Liaisons
- Panel: Supporting Persons with Disabilities in STEM Disciplines
- Discussion: Plans for the 2019–2020 Report and Future Directions

Dated: September 11, 2019.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2019–20039 Filed 9–16–19; 8:45 am]

**BILLING CODE 7555–01–P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Sunshine Act Meetings: Audit Committee Meeting

**TIME AND DATE:** 1:00 p.m., Friday, September 20, 2019.

**PLACE:** NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington DC 20002.

**STATUS:** Open (with the exception of Executive Session).

**MATTERS TO BE CONSIDERED:** Consistent with the requirements of 5 U.S.C. 552 (b)(e), NeighborWorks America has submitted for publication in the **Federal Register** this notice of the Audit Committee Meeting that occurred on Tuesday, December 11, 2018. The Audit Committee determined by a recorded vote that business required that such meeting be called at such date, and made public announcement of the time, place, and subject matter of such meetingat the earliest practicable time.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Internal Audit Report

**Agenda**

I. Call to Order
II. Executive Session
III. Auditor Rotation Policy
IV. Internal Audit Reports With Management's Response
V. Internal Audit Status Reports
VI. Adjournment

**PORTIONS OPEN TO THE PUBLIC:** Call to Order; Auditor Rotation Policy; Internal Audit Reports with Management's Response; Internal Audit Status Reports; and Adjournment.

**PORTIONS CLOSED TO THE PUBLIC:** Executive Session.

**CONTACT PERSON FOR MORE INFORMATION:** Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; *Rsimmons@nw.org.*

**Rutledge Simmons,**

*EVP & General Counsel/Corporate Secretary.*

[FR Doc. 2019–20183 Filed 9–13–19; 4:15 pm]

**BILLING CODE 7570–02–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2019–0181]**

## Standard Format and Content for Applications To Renew Nuclear Power Plant Operating Licenses

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG–1341, ''Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses.'' This regulatory guide (RG) describes the standard format and content that the NRC staff considers acceptable for applications for renewal and subsequent renewal of operating licenses for commercial nuclear power plants.

**DATES:** Submit comments by October 17, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. This public review and comment period is 30 days in duration, although the public review and comment period for draft RGs is usually 60 days. The shortened comment period is provided because the NRC has previously interacted with stakeholders on related industry and NRC guidance, and consequently does not anticipate significant public comment. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0181. Address questions about NRC docket IDs to Jennifer Borges; telephone: 301–287–9221; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Bennett Brady, Office of Nuclear Reactor Regulation, telephone: 301–415–2981, email: *Bennett.Brady@nrc.gov,* Amy Hull, Office of Nuclear Regulatory Research, telephone: 301–415–2435, email: *Amy.Hull@nrc.gov,* and Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov.* All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

#### *A. Obtaining Information*

Please refer to Docket ID NRC–2019–0181 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0181.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* DG–1341 is available in ADAMS under Accession No. ML19213A345.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

#### *B. Submitting Comments*

Please include Docket ID NRC–2019–0181 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *https://www.regulations.gov* and also enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Additional Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses,'' is temporarily identified by its task number, DG–1341. DG–1341 is proposed revision 2 of Regulatory Guide 1.188. This revision of the guide broadens the scope of the guide to include subsequent license renewal. The guide endorses two industry guidance documents that describe methods that the staff of the NRC considers acceptable for use in preparing applications for license renewal and subsequent license renewal.

Specifically, this revision endorses Nuclear Energy Institute (NEI) 17–01, ''Industry Guideline for Implementing the Requirements of 10 CFR part 54 for Subsequent License Renewal'' (ADAMS Accession No. ML17339A599), which provides an acceptable approach for implementing the requirements of title 10 of the *Code of Federal Regulations* (10 CFR) part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' for subsequent license renewal. The guidance in NEI 17–01 is consistent with previously published NRC guidance. In particular,

NUREG–2191, Volumes 1 and 2, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' and NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants—Final Report,'' both underwent significant public interaction and extensive review by the Advisory Committee on Reactor Safeguards.

The guide applies to holders of operating licenses under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' The guide could also apply to holders of combined licenses under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' However, because no combined license holder is expected to use this guide for at least two decades, the NRC is not expanding the guide's applicability to combined license holders at this time.

### III. Backfitting

DG–1341 describes one acceptable method for demonstrating compliance with 10 CFR part 54 for applicants for nuclear power plant license renewal and subsequent license renewal. This DG, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting'' (the Backfit Rule). Existing licensees and applicants for license renewal or subsequent license renewal will not be required to comply with the positions set forth in this DG. Further information on the staff's use of the DG, if finalized, is contained in the DG under Section D., ''Implementation.''

Applicants and potential applicants are not, with certain exceptions not applicable for this guide, protected by the Backfit Rule. The Backfit Rule—with certain exclusions discussed below—was not intended to apply to every NRC action that substantially changes the expectations of current and future applicants. Therefore, the positions in any RG, if imposed on applicants, would not represent backfitting (except as discussed below).

The exceptions to the general principle that applicants and potential applicants are not protected by the Backfit Rule are applicable whenever a 10 CFR part 50 operating license applicant references a construction permit. The staff does not, at this time, intend to impose the positions represented in DG–1341 in a manner that is inconsistent with the Backfit Rule. If, in the future, the staff seeks to impose a position in this RG in a manner that constitutes backfitting under the Backfit Rule, then the staff will address the backfitting provisions in the Backfit Rule.

Dated at Rockville, Maryland, this 11th day of September, 2019.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2019–20005 Filed 9–16–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2017–0187]**

## Proposed Revisions to Standard Review Plan Section 14.3.3, Piping Systems and Components—Inspections, Tests, Analyses, and Acceptance Criteria

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard Review Plan—final section revision; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 14.3.3, ''Piping Systems and Components—Inspections, Tests, Analyses, and Acceptance Criteria,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.''

**DATES:** This Standard Review Plan update takes effect on September 17, 2019.

**ADDRESSES:** Please refer to Docket ID NRC–2017–0187 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2017–0187. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- The NRC posts its issued staff guidance on the NRC's public website at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.*

**FOR FURTHER INFORMATION CONTACT:** Mark Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3053, email: *Mark.Notich@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On September 25, 2018 (83 FR 48473), the NRC published for public comment a proposed revision to Section 14.3.3, ''Piping Systems and Components—Inspections, Tests, Analyses, and Acceptance Criteria,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The public comment period closed on November 26, 2018. Several public comments were received regarding draft Revision 1 of Standard Review Plan (SRP) Section 14.3.3. The public comments received and the associated staff responses are available in ADAMS under Accession No. ML17317A442. The final Revision 1 to NUREG–0800, Section 14.3.3, ''Piping Systems and Components—Inspections, Tests, Analyses, and Acceptance Criteria,'' is available in ADAMS under Accession No. ML19002A478.

### II. Backfitting and Issue Finality

Chapter 14 of the SRP provides guidance to the staff for reviewing inspections, tests, analyses, and acceptance criteria information in licensing applications. Section 14.3.3 of the SRP provides guidance for the review of information addressing piping systems and components.

Issuance of this SRP section revision does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is guidance directed to the NRC staff with respect to its regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in guidance intended for use by only the

staff are not matters that constitute backfitting as that term is defined in 10 CFR 50.109(a)(1) or involve the issue finality provisions of 10 CFR part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not apply to current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, the subject of either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions of 10 CFR part 52 were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever a 10 CFR part 50 operating license applicant references a construction permit or a 10 CFR part 52 combined license applicant references a license (*e.g.,* an early site permit) and/or an NRC regulatory approval (*e.g.,* a design certification rule) for which specified issue finality provisions apply.

The NRC staff does not currently intend to impose the positions represented in this final SRP section in a manner that constitutes backfitting or is inconsistent with any issue finality provision of 10 CFR part 52. If in the future the NRC staff seeks to impose positions stated in this SRP section in a manner that would constitute backfitting or be inconsistent with these issue finality provisions, the NRC staff must make the showing as set forth in the Backfit Rule or address the regulatory criteria set forth in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

3. *The NRC staff has no intention to impose the SRP positions on existing nuclear power plant licensees either now or in the future (absent a voluntary request for a change from the licensee, holder of a regulatory approval or a design certification applicant).*

The staff does not intend to impose or apply the positions described in this final SRP section to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals. Hence, the issuance of this SRP guidance—even if considered guidance subject to the Backfit Rule or the issue finality provisions in 10 CFR part 52—would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that would constitute backfitting or does not provide issue finality as described in the applicable issue finality provision, then the staff must make a showing as set forth in the Backfit Rule or address the criteria set forth in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

## III. Congressional Review Act

The Office of Management and Budget makes the determination that the NRC action titled 'NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Revision 1 of Standard Review Plan Section 14.3.3, ''Piping Systems and Components—Inspections, Tests, Analyses, and Acceptance Criteria,''' is non-major under the Congressional Review Act. The Office of Management and Budget's decision regarding SRP 14.3.3 is contained in ADAMS under Accession No. ML19239A003.

Dated at Rockville, Maryland, this 11th day of September, 2019.

For the Nuclear Regulatory Commission.

**Jason C. Paige,**

*Acting Chief, Licensing Branch 3, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.*

[FR Doc. 2019–20007 Filed 9–16–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–275 and 50–323; NRC–2019–0131]**

## Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has issued exemptions in response to a December 13, 2018, request from Pacific Gas and Electric Company (PG&E or the licensee) from certain regulatory requirements for the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (Diablo Canyon).

**DATES:** The exemptions were issued on September 10, 2019.

**ADDRESSES:** Please refer to Docket ID NRC–2019–0131 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0131. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Balwant K. Singal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3016; email: *Balwant.Singal@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the exemption is attached.

Dated at Rockville, Maryland, this 12th day of September 2019.

For the Nuclear Regulatory Commission.

**Balwant K. Singal,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

## ATTACHMENT—Exemptions

## NUCLEAR REGULATORY COMMISSION

**Docket Nos. 50–275 and 50–323**

**Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Units 1 and 2 Exemption**

### I. Background

Pacific Gas and Electric Company (PG&E or the licensee) is the holder of Facility Operating License Nos. DPR–80 and DPR–82, which authorizes operation of Diablo Canyon Nuclear Power Plant (Diablo Canyon), Units 1 and 2, respectively. The licenses provide, among other things, that Diablo Canyon, Units 1 and 2 are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in

effect. Diablo Canyon is located in San Luis Obispo, California.

By letter dated November 27, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18331A553), the licensee informed the NRC of its intent to permanently cease operations for Diablo Canyon, Units 1 and 2, on November 2, 2024, for Unit 1, and August 26, 2025, for Unit 2.

By letter dated January 29, 2019 (ADAMS Accession No. ML19029A020), PG&E notified the NRC that a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code was filed on January 29, 2019, in the United States Bankruptcy Court for the Northern District of California. The NRC acknowledged PG&E's bankruptcy notification on February 5, 2019 (ADAMS Accession No. ML19031C816). By letter dated March 14, 2019, the NRC staff stated that it does not anticipate that the PG&E bankruptcy filing, including that of its parent company, will have any adverse safety impacts at Diablo Canyon, Units 1 and 2 (ADAMS Accession No. ML19074A109). Additionally, the NRC staff stated that the bankruptcy filing does not relieve PG&E of its obligations to comply with NRC requirements and that PG&E must continue to comply with all of its obligations under the Atomic Energy Act of 1954 (AEA) as amended, and the NRC's regulations, including the obligations relating to decommissioning financial assurance. The NRC continues to monitor PG&E's decommissioning financial assurance for Diablo Canyon and continued compliance with NRC's decommissioning funding requirements.

## II. Request/Action

By letter dated December 13, 2018 (ADAMS Accession No. ML18347B552), PG&E submitted a request for exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.82(a)(8)(ii) for Diablo Canyon, Units 1 and 2. The exemptions would allow the licensee to use an amount of funds from the Diablo Canyon Nuclear Decommissioning Trust (NDT) [1] for decommissioning planning above the amount limitations specified in NRC regulations for operating reactors and use withdrawals from the NDT for planning activities associated with spent fuel management and site restoration. Overall, the proposed action would allow PG&E to withdraw $187.8 million ($2017) from the Diablo Canyon NDT to fund radiological decommissioning, spent fuel management, and site restoration planning activities necessary prior to permanent cessation of operations of Diablo Canyon, Units 1 and 2, in 2024 and 2025, respectively.

According to the application, planning activities necessary to support direct transition to physical decommissioning upon permanent shut down of Diablo Canyon, Units 1 and 2, include: Obtaining revisions to NRC licenses and requirements; obtaining state and local permits required for decommissioning activities and supporting required stakeholder processes related to future land use and disposition of facilities; completing engineering design, work plans, technical evaluations, and procurement to support several major, critical decommissioning projects scheduled at the front end of the decommissioning effort; developing and supporting decommissioning cost estimates and supporting nuclear decommissioning proceedings at the California Public Utilities Commission (CPUC); and developing detailed executable work plans for decommissioning work, revising plant processes and procedures as necessary.

PG&E has estimated that a total of $187.8 million ($2017) would be required to be spent on pre-shutdown planning activities; $148.4 million would be for radiological decommissioning planning activities, and $39.4 million would be for spent fuel management and site restoration planning activities. The estimated $148.4 million amount is more than 3 percent of the generic minimum decommissioning amount calculated for an operating reactor using the formula set forth by NRC regulations at 10 CFR 50.75. Furthermore, withdrawals from the decommissioning trust fund cannot be used to fund the PG&E estimated $39.4 million for spent fuel management and site restoration planning activities absent (1) a clear indication that monies in the fund were collected for those purposes and are clearly and consistently accounted for separately,[2] or (2) an exemption from the requirements of 10 CFR 50.82(a)(8)(i)(A) for use of funds for those purposes.

The requirements of 10 CFR 50.82(a)(8)(ii) restrict the use of the NDT for decommissioning planning to 3 percent of the generic minimum decommissioning amount calculated using the formula set forth by the regulations at 10 CFR 50.75. For licensees that have submitted the certifications required under 10 CFR 50.82(a)(1) and commencing 90 days after the NRC has received the Post-Shutdown Decommissioning Activities Report, an additional 20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC prior to the licensee using any funding in excess of these amounts. Furthermore, as required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by the licensee if the withdrawals are for legitimate decommissioning activities, consistent with the definition of decommissioning in 10 CFR 50.2. The definition in 10 CFR 50.2 states, that ''Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) Release of the property for unrestricted use and termination of the license; or (2) Release of the property under restricted conditions and termination of the license.''

This definition addresses radiological decommissioning and does not include activities associated with irradiated fuel management or site restoration activities. Therefore, these regulations would limit withdrawals from the Diablo Canyon NDT to $37.2 million ($18.6 million per unit) and would allow spending only on planning activities for radiological decommissioning. In addition, as noted above, the licensee does not plan to permanently cease operations for Diablo Canyon, Units 1 and 2, until November 2, 2024 for Unit 1, and August 26, 2025, for Unit 2. Therefore, exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.82(a)(8)(ii) are needed to allow the licensee to use an amount of funds from the Diablo Canyon NDT for decommissioning planning above the 3 percent limitation specified in NRC regulations and to use withdrawals from the NDT for planning activities associated with spent fuel management and site restoration.

## III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1)

[1] The NRC notes that decommissioning trust funds in the NDT are not property of PG&E's estate and are held in trust for the exclusive purpose of providing funds for the decommissioning of the nuclear plants. See 10 CFR 50.75.

[2] The NRC does not preclude the commingling of funds accumulated to comply with NRC radiological decommissioning requirements and funds accumulated to address site restoration costs and spent fuel management costs, as long as the licensee is able to identify and account for the NRC radiological decommissioning funds that are contained within its single account. See NRC Regulatory Issue Summary 2001–07, Revision 1, ''10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning,'' dated January 8, 2009 (ADAMS Accession No. ML083440158); Regulatory Guide 1.184, Revision 1, ''Decommissioning of Nuclear Power Reactors,'' dated October 2013 (ADAMS Accession No. ML13144A840).

the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances, as stated in 10 CFR 50.12(a)(2) include, among other things: (a) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule''; and (b) ''Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.''

*A. The Exemptions Are Authorized by Law*

The exemptions would allow PG&E to withdraw $187.8 million ($2017) from the Diablo Canyon NDT to fund planning activities for radiological decommissioning, spent fuel management, and site restoration prior to permanent cessation of operations. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined, as explained in Section D below, that there is reasonable assurance of adequate funding for radiological decommissioning because PG&E's withdrawal of $187.8 million ($2017) from the Diablo Canyon NDT for planning activities for radiological decommissioning, spent fuel management, and site restoration will not adversely impact PG&E's ability to complete radiological decommissioning within 60 years of permanent cessation of operations and terminate the Diablo Canyon licenses. Accordingly, the exemption is authorized by law because granting the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations.

*B. The Exemptions Present No Undue Risk to Public Health and Safety*

The proposed exemptions would allow PG&E to withdraw $187.8 million ($2017) from the Diablo Canyon NDT to fund planning activities for radiological decommissioning, spent fuel management, and site restoration between now and permanent cessation of operations, to support a safe and efficient transition from operational to decommissioning status. PG&E has estimated that a total of $187.8 million ($2017) would be needed for pre-shutdown planning activities; $148.4 million would be for radiological decommissioning planning activities, and $39.4 million would be for spent fuel management and site restoration planning activities. According to the licensee, spending the $187.8 million now will save approximately $166.1 million ($2017) in overall decommissioning cost mainly due to savings on security, fire protection, and overall staffing costs mainly due to savings on security, fire protection, and overall staffing costs.

As explained in further detail in Section D below, based on the NRC staff's review of PG&E's exemption request and site-specific cost estimate and the staff's independent cash flow analysis, the NRC staff finds that PG&E's withdrawal of $187.8 million ($2017) from the Diablo Canyon NDT for planning activities for radiological decommissioning, spent fuel management, and site restoration, will not adversely impact PG&E's ability to complete radiological decommissioning within 60 years of permanent cessation of operations and terminate the Diablo Canyon licenses. Therefore, the requested exemptions will not present an undue risk to public health and safety if granted.

In addition, granting the requested exemptions will not alter the operation of any plant equipment or systems and, therefore, does not present an undue risk to safety. The proposed exemptions do not introduce any new industrial, radiological, chemical, or radiological hazards that would present a health and safety risk nor would granting the exemptions result in modifying or removing design or operational controls or safeguards that are intended to mitigate onsite hazards. This exemption does not diminish the effectiveness of other regulations that ensure available funding for decommissioning, including 10 CFR 50.82(a)(6), which prohibits licensees from performing any decommissioning activities that could foreclose release of the site for possible unrestricted use, result in significant environmental impacts not previously reviewed, or result in there no longer being reasonable assurance that adequate funds will be available for decommissioning. Therefore, the requested exemptions will not present an undue risk to public health and safety if these exemptions are granted.

*C. The Exemptions Are Consistent With the Common Defense and Security*

The exemptions, allowing withdrawal of $187.8 million ($2017) of the Diablo Canyon NDT for planning activities for radiological decommissioning, spent fuel management, and site restoration do not alter the design, function, or operation of any structures or plant equipment that is necessary to maintain the safe and secure status of the plant and will not adversely affect PG&E's ability to physically secure the site or protect special nuclear material. Therefore, the common defense and security is not impacted by the exemptions.

*D. Special Circumstances*

The regulation under 10 CFR 50.12(a)(2) states, in part, that ''[t]he Commission will not consider granting an exemption unless special circumstances are present,'' and identifies, in 10 CFR 50.12(a)(2)(i)–(vi), when special circumstances are present. Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.82(a)(8)(ii) is to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors within 60 years of permanent cessation of operations. Strict application of these requirements would limit withdrawal from the Diablo Canyon NDT to $37.2 million ($18.6 million per unit) and would allow spending only on planning activities for radiological decommissioning.

The NRC staff performed an independent cash flow analysis using information provided in PG&E's cash flow statement in Enclosure 2 of the exemption request, dated December 13, 2018, and information provided in PG&E's site-specific cost estimate submitted by letter dated March 26, 2019 (ADAMS Accession No. ML19094B780). The balance in the NDT as of December 31, 2018, was $1.31 billion for Unit 1 and $1.71 billion for Unit 2. The site-specific cost estimate states that PG&E plans to deposit $226.7 million per year into the Unit 1 NDT in 2020–2024, and $151.1 million per year into the Unit 2 NDT in 2020–2025. The site-specific cost estimate also states that the estimated costs for radiological decommissioning are $1.581 billion for Unit 1 and $1.578 billion for Unit 2.

Using the costs for radiological decommissioning for both units provided in the site-specific cost estimate, a 2% rate of return on the NDT (as allowed by 10 CFR 50.75(e)(1)(ii)), and considering withdrawal of $187.8

million ($2017) from the Diablo Canyon NDT for the specified planning activities, the NRC staff determined that the balance in the NDTs at the completion of radiological decommissioning in 2038 is expected to be approximately $1.046 billion for Unit 1 and $1.117 billion for Unit 2 indicating that the licensee will have sufficient funds to complete radiological decommissioning. In addition, the staff's independent cash flow analysis projects that the Diablo Canyon NDT would contain approximately $3.68 billion in 2076 (for both units) when PG&E projects the site will be fully decommissioned, and all spent fuel will be removed from the site. Therefore, the NRC staff finds that there is reasonable assurance of adequate funding for radiological decommissioning because PG&E's withdrawal of $187.8 million ($2017) from the Diablo Canyon NDT for radiological decommissioning, spent fuel management, and site restoration planning activities will not adversely impact PG&E's ability to complete radiological decommissioning within 60 years of permanent cessation of operations and terminate the Diablo Canyon licenses.

In addition, under 10 CFR 50.75(f), the licensee will be required to submit an annual report regarding the status of decommissioning funding for Unit 1, beginning in 2020, and for Unit 2, beginning in 2021 because the units will be within five years of permanently shutting down. Also, under 10 CFR 50.75(h)(2), the licensee is required to provide the NRC with written notice at least 30 business days prior to any disbursement from the NDT for spent fuel management and site restoration planning activities. Lastly, the NRC notes that PG&E is an electric utility as defined by 10 CFR 50.2, and therefore, has the ability to address any future shortfall in the NDT with the CPUC (who sets the electric rates for PG&E), should that be necessary in the future.

In transitioning to and planning for decommissioning activities, several power reactor licensees have requested exemptions from the decommissioning funding assurance requirements in 10 CFR 50.75 and 10 CFR 50.82 to allow for the withdrawal of funds from their NDTs for expenses unrelated to radiological decommissioning as defined in 10 CFR 50.2, such as for spent fuel management and site restoration. Generally, the NRC has granted these exemption requests, on a case-by-case basis, finding reasonable assurance that even after the proposed withdrawals of funds for the requested use (*e.g.,* spent fuel and site restoration), sufficient funding remains in the NDT to complete radiological decommissioning and terminate the license.

The Commission addresses a similar issue in Staff Requirements Memorandum (SRM) SECY–02–0085, ''Recent Issues With Respect to Decommissioning Funding Assurance That Have Arisen as Part of License Transfer Applications and Other Licensing Requests,'' dated January 3, 2003 (ADAMS Accession No. ML030030539). In that SRM, the Commission stated that, ''[t]he staff should continue to review requests for withdrawal or non-transfer of funds from decommissioning trusts on a case-by-case basis,'' and ''. . . while a trust is accumulating, our regulations should be interpreted as strictly as possible to preclude withdrawals . . . (both radiological and non-radiological).'' The staff recognizes that PG&E's exemption request has been submitted by the licensee during the operational life and decommissioning funding-accumulating phase of the license. However, given the unique circumstances of PG&E's request, including the known date of shutdown of the units in advance, the time period until the units are permanently shut down, PG&E's projected cost savings of $166.1 million ($2017), the current balance of the NDT, the projected balance of the NDT at license termination based on the staff's independent cash flow analysis, and PG&E's ability to address any future shortfalls in the NDT with the CPUC, the NRC staff determined that the request is justified under the SRM.

In summary, the NRC staff found that reasonable assurance exists that adequate funds will be available in the Diablo Canyon NDT to complete radiological decommissioning and terminate the Part 50 license, with sufficient funding available beyond that required under 10 CFR 50.75 to pay for PG&E's proposed planning activities for radiological decommissioning, spent fuel management, and site restoration. Accordingly, the NRC staff concludes that application of the 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.82(a)(8)(ii) requirements that limit the withdrawal of funds from the Diablo Canyon NDT for decommissioning planning to 3 percent for operating reactors and preclude withdrawals from the NDT for planning activities associated with spent fuel management and site restoration are not necessary to achieve the underlying purpose of the rule; thus, special circumstances are present supporting approval of the exemption request.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others who are similarly situated.

The NRC staff analyzed PG&E's cash flow statements in Enclosure 3 of the application dated December 13, 2018, that compared conducting planning activities while the units are in operation and spending the proposed $187.8 million ($2017) over the next few years against waiting until permanent cessation of operations and then conducting the planning activities. PG&E's analysis shows that by waiting to conduct the planning activities, the licensee would need to spend significant resources ($166.1 million) on various activities (security, operations, chemical and radiation protection, and fire brigade) that can be avoided by conducting the planning activities while the units are in operation. The licensee also stated that executing on planning and permitting activities between now and permanent shut down would allow physical decommissioning to begin shortly after permanent shut down. The licensee estimates this would reduce the duration of the decommissioning activities by 2 years. Based on the above, the staff finds that this increased cost would result in undue hardship or other costs to the licensee that are significantly in excess of those contemplated when the regulation was adopted as these increased costs can be avoided by granting the exemption request.

*E. Environmental Considerations*

In accordance with 10 CFR 51.31(a), the Commission has determined that granting of these exemptions will not have a significant effect on the quality of the human environment (see Environmental Assessment and Finding of No Significant Impact published on August 16, 2019 (84 FR 42025)).

## IV. Conclusions

In consideration of the above, the NRC staff finds that PG&E has provided reasonable assurance that adequate funds will be available for the radiological decommissioning of Diablo Canyon, even with the withdrawal of $187.8 million ($2017) from the Diablo Canyon NDT for planning activities for radiological decommissioning, spent fuel management, and site restoration.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are

consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants PG&E exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.82(a)(8)(ii) to allow the licensee to use $187.8 million ($2017) from the Diablo Canyon NDT for decommissioning planning above the 3 percent limitation specified in NRC regulations and for withdrawals from the NDT for planning activities associated with spent fuel management and site restoration.

The exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 10th day of September 2019.

For the Nuclear Regulatory Commission.

/RA/

**Craig G. Erlanger,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## POSTAL SERVICE

### Mailing Cremated Remains

**AGENCY:** Postal Service ™.

**ACTION:** Notice of prospective revision of standards; invitation to comment.

**SUMMARY:** The Postal Service is proposing to amend *Hazardous, Restricted, and Perishable Mail,* Publication 52, in various sections to require markings on mailpieces containing cremated remains, to eliminate the use of USPS-produced Priority Mail Express® labels for domestic shipments, and to limit the use of additional mailing services.

**DATES:** Submit comments on or before October 17, 2019.

**ADDRESSES:** Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *ProductClassification@usps.gov,* with a subject line of ''Mailing Cremated Remains.'' Faxed comments are not accepted.

**Confidentiality**

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC, 20260. These records are available for review on Monday through Friday, 9 a.m.—4 p.m., by calling 202–268–2906.

**FOR FURTHER INFORMATION CONTACT:** Karen F. Key at (202) 268–7492 or Garry Rodriguez at (202) 268–7281.

**SUPPLEMENTARY INFORMATION:** The Postal Service is proposing to amend Publication 52 in various sections to:

1. Require the use of Label 139, *Cremated Remains,* on all domestic or international mailpieces containing cremated remains.

2. Eliminate the use of Labels 11–B, 11–F, and 11–HFPU, for domestic shipments containing cremated remains.

3. Limit the additional mailing services for mailpieces containing cremated remains to insurance and return receipt.

**Background**

Publication 52 subsection 451.22 provides that a mailpiece containing cremated remains (human or animal) must be shipped by Priority Mail Express or Priority Mail Express International® Service.

Publication 52 subsection 451.22b provides that the contents, cremated remains, must be indicated on the applicable customs declaration when addressed to an international destination. However, as provided in subsections 451.22a and 451.22b, markings including the use of Label 139 are optional on both domestic and international mailpieces.

*Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) section 115.2.0, provides that domestic Priority Mail Express customers have the option to use a USPS-provided Priority Mail Express label (11–B, 11–F, 11–HFPU) or single-ply Priority Mail Express label generated through Click-N-Ship® or other USPS-approved method.

DMM subsection 503.1.4.1, provides that mailpieces sent at Priority Mail Express prices are eligible to have Adult Signature Services, Collect on Delivery, additional insurance, and return receipt services added.

Domestic Mail Manual section 507.3.0 provides that mailpieces sent at Priority Mail Express prices are eligible for Hold For Pickup service.

**Proposal**

To increase the visibility of mailpieces containing cremated remains to postal employees and to ensure those mailpieces are more secure for processing and timely delivery, the Postal Service is proposing to require the use of Label 139 to be affixed to each side (including top and bottom) of a Priority Mail Express or Priority Mail Express International mailpiece containing cremated remains (USPS-produced or customer supplied). As an alternative, the Postal Service is introducing a special Priority Mail Express cremated remains branded box (BOX–CRE) that may be used for domestic or international shipments of cremated remains. The new Priority Mail Express cremated remains branded box will be available as part of a kit that will be offered in two versions. One kit will contain the box and a roll of tape. The other kit will include the box, a self-sealing plastic bag, bubble wrap, tape, and Publication 139, *How to Package and Ship Cremated Remains.* Both kits can be ordered online at the Postal Store on USPS.com®.

To improve service, the Postal Service is proposing to provide an option for retail customers to present a mailpiece containing cremated remains at a Post Office™ location and have a shipping label printed and affixed. Customers will continue to have the option to use a single-ply Priority Mail Express label generated through Click-N-Ship or other USPS-approved method. If customers generate a single-ply label, the Postal Service is proposing to require an Intelligent Mail® package barcode (IMpb®) shipping label with the appropriate service type code and banner text above the barcode (see Publication 199) used for cremated remains domestic shipments. The shipping services file must include the appropriate cremated remains three-digit Extra Service Code for domestic and international shipments (see Publication 199). The use of a Priority Mail Express Label 11–B, 11–F, and 11–HFPU, will no longer be accepted for cremated remains domestic shipments.

As a result of improving service with the new shipping label requirements, the Postal Service is proposing to limit the extra services available when mailing cremated remains to additional insurance and return receipt, and proposes to eliminate the option to use Hold For Pickup service. Customers will continue to have the option to request a signature.

In addition, the Postal Service will update *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) and International Mail Manual (IMM®), and Publication 139, *How to Package and Ship Cremated Remains,* under separate cover.

The proposed revisions will enable the Postal Service to provide an improved customer experience from sender to receiver.

**Brittany M. Johnson,**

*Attorney, Federal Compliance.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86926; File No. SR–CboeEDGX–2019–056]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fee Schedule

September 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is attached [sic] as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''EDGX Options''), effective September 3, 2019.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 24% of the market share and currently the Exchange represents only 3% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's Fees Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a standard fee of $0.20 per contract for Market Maker orders that add liquidity in both Penny and Non-Penny Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, the Exchange currently offers seven Market Maker Volume Tiers under Footnote 2 of the fee schedule which provide reduced fees between $0.17 per contract and $0.01 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee codes PM and NM. Under the current Market Maker Volume Tiers, a Member receives a reduced fee between $0.01—$0.17 per contract, where the Member has an ADV[4] in Market Maker orders greater or equal to a specified percentage of OCV[5] (Tiers 1–5). Members also have an opportunity to receive a reduced fee of $0.03–$0.04 per contract under Tiers 6 and 7 where the Member satisfies alternative criteria including, reaching specified ADV thresholds in (i) in Customer orders, (ii) Customer or Market Maker orders, (iii) AIM Agency Orders and (iv) complex Customer orders. The Exchange proposes to adopt a new Market Maker Volume Tier, ''Tier 2'' and renumber the remaining tiers accordingly.

The Exchange believes the proposed MM Penny Add Tier will provide Members an additional opportunity and alternative means to receive a reduced fee for meeting the corresponding proposed criteria. The Exchange believes the proposed tier, along with the existing tiers, also provide an incremental incentive for Members to strive for the highest tier levels, which provide increasingly higher discounts for such transactions.

Particularly, the Exchange proposes to add new Market Maker Volume Tier 2, which would provide a reduced fee of $0.13 per contract where a Member (i) has an ADV in Market Maker orders greater than or equal to 0.15% of average OCV, (ii) Member has a Step-Up ADAV[6] in Market Maker orders from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary (August 30, 2019), available at *https://markets.cboe.com/us/options/market_statistics/*.

[4] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day. ADV is calculated on a monthly basis. *See* Cboe EDGX Options Exchange Fee Schedule.

[5] ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close. *See* Cboe EDGX Options Exchange Fee Schedule.

[6] ''ADAV'' means average daily added volume calculated as the number of contracts added. ADAV is calculated on a monthly basis. *See* Cboe EDGX Options Exchange Fee Schedule. To alleviate confusion, the Exchange also proposes to adopt the definition of ''Step-Up ADAV'' in the Fees Schedule, which term shall mean ADAV in the

July 2019 greater than or equal to 0.10% of average OCV; and (iii) Member has on EDGX Equities an ADAV greater than or equal to 0.30% of average TCV.[7] As such, under the proposed Tier, the Exchange is adopting an alternative set of criteria that Members must meet in addition to the standard ADV in Market Maker orders threshold. Particularly, Members must additionally satisfy a (i) cross-asset threshold, which is designed to incentivize members to achieve certain levels of participation on both the Exchange's options and equities platform (''EDGX Equities'') and (ii) a step-up ADAV threshold, which is designed to encourage growth (*i.e.,* Members must increase their relative liquidity each month over a predetermined baseline (in this case the month being July 2019)). Overall, the proposed reduced fee and corresponding criteria is designed to encourage Members to increase their order flow, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[8] in general, and furthers the requirements of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive lower fees by providing a different set of criteria they can reach for. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[10] including the Exchange,[11] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including pricing incentives tied to comparable tiers.[12]

Moreover, the Exchange believes the proposed Market Maker Tier 2 is a reasonable means to encourage Members to increase their liquidity on the Exchange and also their participation on EDGX Equities. The Exchange believes that adopting a tier with alternative criteria to the existing Market Maker Volume Tiers, will encourage those Members who could not previously achieve the criteria under the existing Market Maker Volume Tiers, to increase their order flow on EDGX options and equities. For example, the proposed tier would provide an opportunity for Members who have an ADV in Market Makers Orders of at least 0.15% of average OCV, but less than 0.25% of average OCV (the requirement under current Tier 2), to receive the same lower fee as offered under current Tier 2 if they can otherwise meet the threshold requirement based on EDGX equities participation and can grow a modest amount since July 2019. Similarly, for Market Makers that participate on both EDGX Options and Equities, and do not currently meet the ADV threshold under current Tier 2 (*i.e.,* 0.25%), but can or do meet the proposed equities ADAV threshold, the proposed tier may incentivize those participants to grow their options volume in order to receive reduced fees. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed reduced fee is reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed fee and threshold appropriately reflects the incremental difficulty to achieve the existing Market Maker Volume Tiers. The proposed reduced fee amount also does not represent a significant departure from the reduced fees currently offered under the Exchange's existing Market Maker Volume Tiers. Indeed, the proposed reduced fee amount is the same offered as the existing Market Maker Volume Tier 2 (*i.e.,* $0.13 per contract) and within the range of the reduced fees offered under the remaining Market Maker Volume Tiers (*i.e.,* $0.17–$0.01 per contract).

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers. Additionally a number of Market Makers have a reasonable opportunity to satisfy the tier's criteria, which the Exchange believe is less stringent than other existing Market Maker Volume Tiers. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed tier, the Exchange anticipates one to three members meeting, or being reasonably able to meet, the proposed criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional liquidity on EDGX Options and Equities to qualify for the proposed reduced fee. To the extent a Member participates on the Exchange but not on EDGX Equities, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from

relevant baseline month subtracted from current ADAV.

[7] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply. *See* Cboe EDGX Options Exchange Fee Schedule.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See e.g.,* Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny Pilot and Non-Penny Pilot Volume Tiers which provide enhanced rebates for Market Maker orders where Members meet certain volume thresholds.

[11] *See e.g.,* Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between $0.01 and $0.17 per contract for Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

[12] *See e.g.,* Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny Pilot and Non-Penny Pilot Add Volume Tiers, which provide enhanced rebates between $0.33–$0.54 per contract where Members, among other things including a cross-asset threshold, meet a specified level of ADAV in Market Maker orders as a percentage of OCV.

the success of EDGX Equities. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities is available to all market participants, which would provide them with access to the benefits on EDGX Equities provided by the proposed change, even where a member of EDGX Equities is not necessarily eligible for the proposed reduced fee on the Exchange.

The Exchange lastly notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the proposed reduced fee. Furthermore, the proposed reduced fee would apply to all Members that meet the required criteria under proposed Market Maker Volume Tier 2.

*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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [13]

The Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies uniformly to market participants. As discussed above, to the extent a Member participates on the Exchange but not on EDGX Equities, the Exchange notes that the proposed change can provide an overall benefit to the Exchange resulting from the success of EDGX Equities. Such success enables the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities is available to all market participants. Additionally the proposed change is designed to attract additional order flow to the Exchange and EDGX Equities. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participant.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 24% of the market share.[14] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[16] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[13] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[14] *See* Cboe Global Markets U.S. Options Market Volume Summary (August 30, 2019), available at *https://markets.cboe.com/us/options/market_statistics/.*

[15] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–056 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–056 and should be submitted on or before October 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20016 Filed 9–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86931; File No. SR-CboeBZX–2019–080]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Fees for a New Data Product on its Equity Options Platform (''BZX Options'') To Be Known as Open-Close Data

September 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 30, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to adopt fees for a new data product on its equity options platform (''BZX Options'') to be known as Open-Close Data. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt fees for a new data product on BZX Options to be known as Open-Close Data, which will be available for purchase to BZX Options Members and Non-Members.[3] Cboe LiveVol, LLC (''LiveVol''), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., will make the Open-Close Data available for purchase to Members and Non-Members on the LiveVol DataShop website (*datashop.cboe.com*). The Exchange proposes to amend its Fee Schedule to adopt fees for the product.

The Exchange recently introduced the Open-Close Data product. Open-Close Data is a data product that summarizes volume (contracts traded on BZX Options) by origin (customer and firm orders), original order size and the opening or closing position of the order. The volume data is also summarized by day and series (symbol, expiration date, strike price, call or put). The Open-Close Data will be available for purchase to both BZX Members and Non-Members on a subscription and ad-hoc basis. The Exchange notes that its affiliate, Cboe Exchange, Inc. (''Cboe Options''), as well as other exchanges, offer a similar data product.[4]

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase Open-Close Data on a subscription basis (end of day file) or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of $500 for subscribing to a daily update which will consist of Open/Close data covering all Exchange-listed securities. Members and non-Members purchasing Open/Close data on a subscription basis will receive access to a daily data file. The Exchange proposes to assess a fee of $400 per request per month for an ad-hoc request of historical Open/Close data covering all Exchange-listed securities. An ad-hoc request can be for any number of months beginning with January 2018 for which the data is

[3] *See* Securities Exchange Act Release No. 86811 (August 29, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Introduce a New Data Product on Its Equity Options Platform (''BZX Options'') to Be Known As Open-Close Data) (SR–CboeBZX–2019–079).

[4] *See* Securities Exchange Act Release No. 55062 (January 8, 2007), 72 FR 2048 (January 17, 2007) (approving SR–CBOE–2006–88); *See also* Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (SR–ISE–2007–70).

available.[5] The proposed subscription and ad-hoc fees will apply both to Members and non-Members. The Exchange notes that other exchanges, including its affiliate Exchange Cboe Exchange, Inc. (''Cboe Options'') provide similar data products that may be purchased on both a subscription and ad-hoc basis and are similarly priced.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for Open-Close Data is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') 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. Particularly, Open-Close Data further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of Open-Close Data and benefits investors by providing access to the Open-Close Data, which may promote better informed trading.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[10] Making alternative data products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between competing products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the proposed Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to the fees assessed by other exchanges that provide similar data products.[11] The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on BZX Options. The proposed Open-Close Data would provide options market participants with valuable information about opening and closing transactions executed on the Exchange, similar to other historical trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions.

Selling historical market data, such as Open-Close Data, is also a means by which exchanges compete to attract business. Specifically, the Open-Close Data would provide insight into trading activity on BZX Options, and would therefore potentially encourage subscribers to direct order flow to the Exchange. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Data, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of alternative products offered by other exchanges.[12] The Exchange therefore believes that the proposed fees for Open-Close Data reflect the competitive environment and would be properly assessed on Member and Non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase Open-Close Data, and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange anticipates a wide variety of market participants to purchase Open-Close Data, including but not limited to buy-side investors, investment banks and academic institutions. The Exchange notes however, that the decision as to whether or not to purchase the Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Data, and the Exchange is not required to make the Open-Close Data available to all investors. Rather, the Exchange is voluntarily making historical Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable, or may decline to purchase such data.

*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. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.[13] The Exchange made Open-Close Data available for

[5] For example, a Member or Non-Member that requests historical Open/Close Data for the months of October 2018 and November 2018, would be assessed a total of $800. The Exchange notes that it may make historical data prior to January 2018 available in the future and that such historical data would be available to all Members and non-Members.

[6] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[11] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[12] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[13] *Id.*

BZX Options in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the proposed data product is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of alternative products available to market participants and investors. At least three other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Data, which the Exchange must consider in its pricing discipline in order to compete for the market data.[14] In this competitive environment, potential purchasers are free to choose which, if any, competing product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own alternative and comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase Open-Close Data. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

*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 Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–080 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–080. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–080 and should be submitted on or before October 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20010 Filed 9–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline (''PHOTO'').

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86930; File No. SR–NYSE–2019–48]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Quoting Thresholds Applicable in Relation to an Issue Experienced by the Consolidated Tape Association on August 12, 2019

September 11, 2019.

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 August 30, 2019, New York Stock Exchange LLC (''NYSE'' or 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 modify the manner in which it calculates certain quoting thresholds applicable to billing on the Exchange in relation to an issue experienced by the Consolidated Tape Association (''CTA'') securities information processor on August 12, 2019. The proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify the manner in which it calculates certain quoting thresholds applicable to billing on the Exchange in relation to an issue experienced by the CTA securities information processor (the ''SIP'') on August 12, 2019 (''SIP Processing Issue''). Specifically, the Exchange proposes to exclude August 12, 2019 from any monthly calculations of quoting thresholds for the month of August, as described further below.

The SIP processes, consolidates, and disseminates real-time last-sale and quote information from every trading venue. According to CTA, on Monday, August 12, 2019, beginning at approximately 2:48 p.m. E.T., the SIP experienced issues with its Consolidated Quote System (''CQS'') output lines, and beginning at 3:12 p.m. E.T., began experiencing disruptions to connectivity to its Consolidated Tape System (''CTS'') lines, and that these issues continued into the after-hours trading sessions. Because of the SIP Processing Issue, the SIP advised that there may be gaps in the intra-day trades, quotes and other messages that were attempted to be sent to it during the impacted time period.[4] As a result of the SIP Processing Issue, the Exchange's determination of the NBBO for a period of that day was likely impacted.

As provided for in the Exchange's Price List, many of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that member organizations must satisfy in order to qualify for particular rates. In particular, for Tape A securities, certain Designated Market Maker (''DMM'') rates are determined based on whether a DMM quotes at the National Best Bid or Offer (''NBBO'') in an applicable security for a specified percentage of time in the applicable month. In addition, credits paid to Supplemental Liquidity Providers (''SLP'') are also based on whether an SLP has met a specified percentage of quoting requirements calculated for an applicable month.

The Exchange believes that because the SIP Processing Issue potentially impacted the ability for the Exchange and other market participants to determine the NBBO in securities during the trading day, this day—August 12, 2019—should be excluded from any monthly calculations relating to NBBO as specified on the Price List. The Exchange believes that excluding August 12, 2019 from the calculation of meeting quoting thresholds for DMMs and SLPs for the month of August would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue on August 12, 2019.[5]

The Exchange notes that the proposed exclusions would be similar to the current provision in the Price List whereby, for purposes of transaction fees and SLP credits, ADV calculations exclude early closing days[6] or if the Exchange experiences a system disruption that lasts for more than 60 minutes.[7] Here, the system disruption was at the SIP, not the Exchange, but nonetheless impacted the Exchange's ability to determine the NBBO during the August 12th trading day.

The proposed change is not otherwise intended to address any other issues surrounding billing for activity on the Exchange and the Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] 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 Proposed Change Is Reasonable

The Exchange believes that excluding August 12, 2019 for purposes of determining transaction fees and credits that are based on whether a member organization quoted at the NBBO for a specified percentage of time over the applicable month is reasonable because the SIP Processing Issue impacted the ability of the Exchange to determine the NBBO in securities during the August 12th trading day. The proposed change to exclude this trading day is reasonable because, without the proposed exclusion, both the numerator and the denominator for August 12, 2019 would be impacted and not calculable for the full trading day. As a result, without the proposed exclusion, a member organization that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, may be negatively impacted by the SIP Processing Issue. Finally, the Exchange believes that the proposed rule change is reasonable because the SIP Processing Issue was not within the Exchange's control nor can the Exchange correct or otherwise remediate the issue.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes that excluding activity on August 12, 2019 for purposes of determining transaction fees and credits based on whether a member organization quoted at the NBBO for a percentage of time during the billing month is equitable because it would apply equally to all market participants on the Exchange and to all credits based on such quoting requirements. In this regard, excluding August 12, 2019 from such calculations would reasonably ensure that a member organization that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue. This is equitable because DMMs and SLPs have specific performance metrics that must be satisfied for assigned securities in order

[4] *See* CTA Notice of ''CTA Processing Issue on August 12, 2019: Post-Mortem,'' which is *available here: https://www.ctaplan.com/alerts#110000144324*.

[5] The exclusion would not apply to Retail Liquidity Providers as there were no registered RLPs on the Exchange on August 12, 2019.

[6] For example, the Exchange closes early on the Friday immediately following Thanksgiving Day (*e.g.*, Friday, November 29, 2019).

[7] *See* footnote 4 in the Price List.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) & (5).

to qualify for the particular rates in the Price List.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the exclusion would apply equally to all member organizations that are subject to transaction rates based on quoting at the NBBO for a specified percentage of the billing month. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Rather, as discussed above, the Exchange believes that the proposed exclusion would reasonably ensure that a member organization that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue. This is not unfairly discriminatory because DMMs and SLPs have specific performance metrics that must be satisfied for assigned securities in order to qualify for the particular rates in the Price List.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed exclusion of August 12, 2019 would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during the month, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue. The Exchange further believes that the proposed exclusions remove impediments to and perfect the mechanism of a free and open market and a national market system because they provide transparency for member organizations and the public regarding the manner in which the Exchange will calculate certain quoting thresholds related to billing for activity on the Exchange on August 12, 2019 and for the month of August 2019. In this regard, the Exchange believes that the proposed exclusions are consistent with the Act because they address inquiries from member organizations regarding how the Exchange will treat August 12, 2019 for purposes of billing.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[11] 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. The proposed rule change would treat all market participants on the Exchange equally by excluding August 12, 2019 from quoting level calculations described in the Price List. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to exclude August 12, 2019 for the purposes of determining transaction fees and credits based on quoting levels as set forth in the Price List. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. In addition, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its member organizations fees and to apply credits in light of the SIP Processing Issue, which was beyond the control of the Exchange.

*Intramarket Competition.* The proposed change is designed to eliminate a trading day that would almost certainly affect the ability of member organizations to meet certain of these thresholds for August 2019. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. By providing member organizations with a greater level of certainty for August 2019 by reasonably ensuring that member organizations that would otherwise qualify for a particular threshold for August 2019, and the corresponding transaction rate, would not be negatively impacted by the SIP Processing Issue, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging member organizations to continue their participation on the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were 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) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] 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) [14] 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:

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2019–48 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–48 and should be submitted on or before October 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20012 Filed 9–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86928; File No. SR–C2–2019–019]**

## Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Fees for a New Data Product To Be Known as Open-Close Data

September 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2019, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to adopt fees for a new data product to be known as Open-Close Data. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt fees for a new data product on C2 Options to be known as Open-Close Data, which will be available for purchase to C2 Options Trading Permit Holders (''TPHs'') and Non-TPHs. Cboe LiveVol, LLC (''LiveVol''), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., will make the Open-Close Data available for purchase to TPHs and Non-TPHs on the LiveVol DataShop website (*datashop.cboe.com*). The Exchange proposes to amend its Fee Schedule to adopt fees for the product.

The Exchange proposes to introduce the Open-Close Data product. Open-Close Data is a data product that summarizes volume (contracts traded on C2 Options) by origin (customer and firm orders), original order size and the opening or closing position of the order. The volume data is also summarized by day and series (symbol, expiration date, strike price, call or put). The Open-Close Data will be available for purchase to both C2 TPHs and Non-TPHs on a subscription and ad-hoc basis. The Exchange notes that its affiliate, Cboe Exchange, Inc. (''Cboe Options''), as well as other exchanges, offer a similar data product.[3]

The Exchange proposes to provide in its Fee Schedule that TPHs and non-TPHs may purchase Open-Close Data on a subscription basis (end of day file) or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of $500 for subscribing to a daily update which will consist of Open/Close data covering all Exchange-listed securities. TPHs and non-TPHs purchasing Open/Close data on a subscription basis will receive access to a daily data file. The Exchange proposes to assess a fee of $400 per request per month for an ad-hoc request of historical Open/Close data covering all Exchange-listed securities. An ad-hoc request can be for any number of months beginning with January 2018 for which the data is available.[4] The

[3] *See* Securities Exchange Act Release No. 55062 (January 8, 2007), 72 FR 2048 (January 17, 2007) (approving SR–CBOE–2006–88); *See also* Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (SR–ISE–2007–70).

[4] For example, a TPH or non-TPH that requests historical Open/Close Data for the months of October 2018 and November 2018, would be assessed a total of $800. The Exchange notes that it may make historical data prior to January 2018 available in the future and that such historical data would be available to all TPHs or non-TPHs.

proposed subscription and ad-hoc fees will apply both to TPHs or non-TPHs. The Exchange notes that other exchanges, including its affiliate Exchange Cboe Exchange, Inc. (''Cboe Options'') provide similar data products that may be purchased on both a subscription and ad-hoc basis and are similarly priced.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for Open-Close Data is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') 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. Particularly, Open-Close Data will further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of Open-Close Data and benefits investors by providing access to the Open-Close Data, which may promote better informed trading.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[9] Making alternative data products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between competing products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the proposed Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to the fees assessed by other exchanges that provide similar data products.[10] The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on C2 Options. The proposed Open-Close Data would provide options market participants with valuable information about opening and closing transactions executed on the Exchange, similar to other historical trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions.

Selling historical market data, such as Open-Close Data, is also a means by which exchanges compete to attract business. Specifically, the Open-Close Data would provide insight into trading activity on C2 Options, and would therefore potentially encourage subscribers to direct order flow to the Exchange. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Data, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of alternative products offered by other exchanges.[11] The Exchange therefore believes that the proposed fees for Open-Close Data reflect the competitive environment and would be properly assessed on TPH or non-TPH users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase Open-Close Data, and are set at a modest level that would allow any interested TPH or non-TPH to purchase such data based on their business needs.

The Exchange anticipates a wide variety of market participants to purchase Open-Close Data, including but not limited to buy-side investors, investment banks and academic institutions. The Exchange notes however, that the decision as to whether or not to purchase the Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Data, and the Exchange is not required to make the Open-Close Data available to all investors. Rather, the Exchange is voluntarily making historical Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable, or may decline to purchase such data.

*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. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.[12] The Exchange made Open-Close Data available for C2 Options in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the

[5] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[11] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[12] *Id.*

proposed data product is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of alternative products available to market participants and investors. At least three other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Data, which the Exchange must consider in its pricing discipline in order to compete for the market data.[13] In this competitive environment, potential purchasers are free to choose which, if any, competing product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own alternative and comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase Open-Close Data. The proposed fees are set at a modest level that would allow any interested TPH or non-TPH to purchase such data based on their business needs.

*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 Act [14] and paragraph (f) of Rule 19b–4 [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2019–019 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–C2–2019–019. 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–C2–2019–019 and should be submitted on or before October 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20013 Filed 9–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[13] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline (''PHOTO'').

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86937; File No. SR–ICEEU–2019–018]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Partial Amendments No. 1 and No. 2, To Adopt Revised Clearing Fees

September 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2019, 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 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)(2) [4] thereunder, so that the proposed rule change was effective upon filing with the Commission. On September 10, 2019, ICE Clear Europe filed Partial Amendment No. 1 and Partial Amendment No. 2 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 and Partial Amendment No. 2 (hereafter referred to as ''the proposed rule change''), from interested persons.

[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)(2).

[5] ICE Clear Europe filed Partial Amendment No. 1 to provide certain additional clarifications and related background documentation on the proposed rule change, and ICE Clear Europe filed Partial Amendment No. 2 to append a redlined version of the proposed fees schedule for the IFEU Products as Exhibit 5 to the proposed rule change. Partial Amendment No. 1 and Partial Amendment No. 2 did not make any changes to the substance of the filing or the text of the proposed rule change.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The principal purpose of the proposed rule change is to revise clearing fees applicable to certain ICE Futures Europe Limited (''IFEU'') equities and UK energy products (''IFEU Products''). The revisions do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.[6]

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. 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*

(a) Purpose

The purpose of the proposed rule change is for ICE Clear Europe to modify certain clearing fees relating to certain IFEU Products[7] as set out below:

- IFEU Equities.
  - FTSE 100 Options: The clearing fee will increase from GBP 0.20 to GBP 0.21 per lot, the exercise/assignment fee is also increasing from GBP 0.20 to GBP 0.30, and the fee cap on the exercise and assignment fee (published and unpublished) is increasing from GBP 1,500 to GBP 2,200.
  - FTSE 100 Options (block only): The clearing fee will increase from GBP 0.25 to GBP 0.26 per lot and the delayed published clearing fee will increase from GBP 0.29 to GBP 0.30 per lot. The clearing fee cap for published transactions will increase from GBP 1,350 to GBP 1,980 and the clearing fee cap for unpublished transactions will increase from GBP 1,620 to GBP 2,700. The exercise/assignment fee is also increasing from GBP 0.20 to GBP 0.30 and the fee cap on the exercise and assignment fee (published and unpublished) is increasing from GBP 1,500 to GBP 2,200.
  - FTSE 250 Futures and Options (block only): The clearing fee will increase from GBP 0.12 to GBP 0.18 per lot and the delayed published clearing fee will increase from GBP 0.13 to GBP 0.27 per lot.
  - FTSE 250 Futures and Options: The clearing fee will increase from GBP 0.09 to GBP 0.14 per lot and an exercise/assignment fee of GBP 0.20 per lot is introduced.
- IFEU UK Electricity Futures: The clearing fee will increase from GBP 0.00157 to GBP 0.0035 per lot.
- IFEU UK Electricity Futures (exchange for physical/exchange for swap/block): The clearing fee will increase from GBP 0.00202 to GBP 0.0045 per lot.

Attached [sic] as Exhibit 5 are the circulars listing the new fees relating to the IFEU Products and a redlined version of the proposed fees schedule for the IFEU Products. The relevant fee schedules relating to the IFEU Products will be updated and are available at: *https://www.theice.com/fees*. The new fees are expected to come into effect on October 1, 2019, for the IFEU Equities Futures and Options products, and on September 2, 2019, for the IFEU UK Electricity Futures products.

(b) Statutory Basis

ICE Clear Europe has determined that the proposed fee changes set forth above are reasonable and appropriate. In particular, ICE Clear Europe believes that the fees have been set at an appropriate level given the costs and expenses to ICE Clear Europe in offering clearing of such IFEU Products, taking into account the investments ICE Clear Europe has made in clearing the markets for these products. The fees will apply to all F&O Clearing Members. ICE Clear Europe believes that imposing such charges thus provides for the equitable allocation of reasonable dues, fees, and other charges among its Clearing Members, within the meaning of Section 17A(b)(3)(D) of the Act.[8] ICE Clear Europe therefore believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[9] and regulations thereunder applicable to it.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. Although the changes may result in certain additional costs to Clearing Members, ICE Clear Europe believes that the revised fees have been set at an appropriate level given the costs and expenses to ICE Clear Europe in offering clearing of the IFEU Products. ICE Clear Europe does not believe that the amendments would adversely affect the ability of such Clearing Members or other market participants generally to engage in cleared transactions or to access clearing. Since the revised fees will apply to all F&O Clearing Members, ICE Clear Europe further believes that the fees will not otherwise adversely affect competition among Clearing Members, adversely affect the market for clearing services or limit market participants' choices for obtaining clearing services.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

**III. Date of Effectiveness of the Proposed Rule Change**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(2)[11] thereunder because it establishes a fee or other charge imposed by ICE Clear Europe on its Clearing Members. Specifically, the proposed rule changes will establish fees to be paid by Clearing Members to ICE Clear Europe in connection with the clearing of certain IFEU Products. 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:

[6] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.

[7] ICE Futures Europe is also changing certain exchange fees with respect to the IFEU Products at the same time.

[8] 15 U.S.C. 78q–1(b)(3)(D). Under this provision, ''[a] clearing agency shall not be registered unless the Commission determines that—(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.''

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2019–018 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2019–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation*. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2019–018 and should be submitted on or before October 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20017 Filed 9–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86929; File No. SR–CboeEDGX–2019–055]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Fees for a New Data Product on Its Equity Options Platform (''EDGX Options'') To Be Known as Open-Close Data

September 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to adopt fees for a new data product on its equity options platform (''EDGX Options'') to be known as Open-Close Data. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt fees for a new data product on EDGX Options to be known as Open-Close Data, which will be available for purchase to EDGX Options Members and Non-Members.[3] Cboe LiveVol, LLC (''LiveVol''), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., will make the Open-Close Data available for purchase to Members and Non-Members on the LiveVol DataShop website (*datashop.cboe.com*). The Exchange proposes to amend its Fee Schedule to adopt fees for the product.

The Exchange recently introduced the Open-Close Data product. Open-Close Data is a data product that summarizes volume (contracts traded on EDGX Options) by origin (customer and firm orders), original order size and the opening or closing position of the order. The volume data is also summarized by day and series (symbol, expiration date, strike price, call or put). The Open-Close Data will be available for purchase to both EDGX Members and Non-Members on a subscription and ad-hoc basis. The Exchange notes that its affiliate, Cboe Exchange, Inc. (''Cboe Options''), as well as other exchanges, offer a similar data product.[4]

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase Open-Close Data on a subscription basis (end of day file) or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of $500 for subscribing to a daily update which will consist of Open/Close data covering all Exchange-listed securities. Members and non-Members purchasing Open/Close data on a subscription basis will receive access to a daily data file. The Exchange proposes to assess a fee of $400 per request per month for an ad-hoc request of historical Open/Close data covering all Exchange-listed securities. An ad-hoc request can be for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86806 (August 29, 2019) (Notice of Filing and Immediate Effectivness of a Proposed Rule Change to Introduce a New Data Product on Its Equity Options Platform (''EDGX Options'') to Be Known As Open-Close Data) (SR–CboeEDGX–2019–054).

[4] *See* Securities Exchange Act Release No. 55062 (January 8, 2007), 72 FR 2048 (January 17, 2007) (approving SR–CBOE–2006–88); *See also* Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (SR–ISE–2007–70).

any number of months beginning with January 2018 for which the data is available.[5] The proposed subscription and ad-hoc fees will apply both to Members and non-Members. The Exchange notes that other exchanges, including its affiliate Exchange Cboe Exchange, Inc. (''Cboe Options'') provide similar data products that may be purchased on both a subscription and ad-hoc basis and are similarly priced.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for Open-Close Data is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') 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. Particularly, Open-Close Data further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of Open-Close Data and benefits investors by providing access to the Open-Close Data, which may promote better informed trading.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10] Making alternative data products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between competing products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the proposed Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to the fees assessed by other exchanges that provide similar data products.[11] The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on EDGX Options. The proposed Open-Close Data would provide options market participants with valuable information about opening and closing transactions executed on the Exchange, similar to other historical trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions.

Selling historical market data, such as Open-Close Data, is also a means by which exchanges compete to attract business. Specifically, the Open-Close Data would provide insight into trading activity on EDGX Options, and would therefore potentially encourage subscribers to direct order flow to the Exchange. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Data, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of alternative products offered by other exchanges.[12] The Exchange therefore believes that the proposed fees for Open-Close Data reflect the competitive environment and would be properly assessed on Member and Non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase Open-Close Data, and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange anticipates a wide variety of market participants to purchase Open-Close Data, including but not limited to buy-side investors, investment banks and academic institutions. The Exchange notes however, that the decision as to whether or not to purchase the Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Data, and the Exchange is not required to make the Open-Close Data available to all investors. Rather, the Exchange is voluntarily making historical Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable, or may decline to purchase such data.

*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. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor

[5] For example, a Member or Non-Member that requests historical Open/Close Data for the months of October 2018 and November 2018, would be assessed a total of $800. The Exchange notes that it may make historical data prior to January 2018 available in the future and that such historical data would be available to all Members and non-Members.

[6] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[11] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

[12] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

options exchanges.[13] The Exchange made Open-Close Data available for EDGX Options in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the proposed data product is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of alternative products available to market participants and investors. At least three other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Data, which the Exchange must consider in its pricing discipline in order to compete for the market data.[14] In this competitive environment, potential purchasers are free to choose which, if any, competing product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own alternative and comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase Open-Close Data. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

*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.

[13] *Id.*

[14] *See e.g.,* Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. *See also* Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline (''PHOTO'').

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2019–055 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–055 and should be submitted on or before October 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20014 Filed 9–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86927; File No. SR–FICC–2019–003]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Revise the MBSD VaR Floor

September 11, 2019.

**I. Introduction**

On July 18, 2019, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule change SR–FICC–2019–003. The proposed rule change was published for comment in the **Federal Register** on August 8, 2019.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description of the Proposed Rule Change**

FICC proposes to amend its Mortgage-Backed Securities Division (''MBSD'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 86553 (August 2, 2019), 84 FR 39041 (August 8, 2019) (SR–FICC–2019–003) (''Notice'').

Clearing Rules (''MBSD Rules'')[4] and the Methodology and Model Operations Document MBSD Quantitative Risk Model (''QRM Methodology Document'')[5] to change one of FICC's margin calculations to: (1) Allow FICC to adjust the margin calculation within a specified range if necessary to cover FICC's credit exposures to each Clearing Member fully with a high degree of confidence; (2) provide that FICC would notify Clearing Members in advance of any such change to the margin calculation; (3) provide that FICC would perform model performance monitoring of the margin calculation on at least a monthly basis; and (4) make certain non-substantive technical changes.

*A. Background*

A key tool that FICC uses to manage the credit risk presented by Clearing Members is the daily calculation and collection of Required Fund Deposits from Clearing Members.[6] The Required Fund Deposit serves as each Clearing Member's margin, and the aggregate of all Clearing Members' Required Fund Deposits constitutes the MBSD Clearing Fund, which FICC would access should a defaulting Clearing Member's own Required Fund Deposit be insufficient to satisfy losses to FICC caused by the liquidation of that Clearing Member's portfolio.[7] Each Clearing Member's Required Fund Deposit amount consists of multiple components, the largest of which is based on the volatility of specified net unsettled positions in the Clearing Member's portfolio, known as the value-at-risk (''VaR'') Charge.[8] This model-based volatility calculation is designed to capture the market price risk associated with the securities in the Clearing Member's portfolio.[9] Specifically, the methodology underlying this calculation projects the potential gains or losses that could occur in connection with the liquidation of a defaulting Clearing Member's portfolio, assuming that a portfolio would take three days to hedge or liquidate in normal market conditions. The model-based volatility calculation uses the projected liquidation gains or losses to arrive at a VaR Charge amount that would cover the projected liquidation losses at a 99 percent confidence level.[10]

The MBSD Rules currently provide for two scenarios in which alternatives to the model-based volatility calculation of the VaR Charge would be necessary.[11] First, FICC would base the VaR Charge on an alternative volatility calculation using historical market price changes of certain benchmark securities (the ''Margin Proxy'') for scenarios in which the primary source of data required to perform the model-based volatility calculation becomes unavailable for an extended period of time.[12] Second, FICC would set the VaR Charge at 5 basis points of the market value of a Clearing Member's gross unsettled positions (the ''VaR Floor'') for scenarios in which the model-based volatility calculation (or Margin Proxy, if used) results in an amount that is less than the VaR Floor.[13]

The VaR Floor addresses the risk that the model-based volatility calculation (or Margin Proxy, if used) may result in little or no VaR Charge for certain portfolios where the calculation methodology applies substantial risk offsets among long and short positions in different classes of mortgage-backed securities that have a high degree of historical price correlation.[14] Due to the risk that historical price correlation may not persist in future market conditions,[15] FICC would employ the VaR Floor, which is based on the market value of the gross unsettled positions in the Clearing Member's portfolio, in order to protect FICC against such risk in the event that FICC is required to liquidate a mortgage-backed securities portfolio in stressed market conditions.

*B. VaR Floor Percentage Adjustments*

The MBSD Rules currently define the VaR Floor as ''5 basis points of the market value of a Clearing Member's gross unsettled positions.'' [16] Therefore, the VaR Floor is used as the Clearing Member's VaR Charge when the model-based volatility calculation yields an amount that is lower than 5 basis points (referred to herein as the ''VaR Floor Percentage'') of the market value of the Clearing Member's gross unsettled positions.[17]

After conducting a review of the VaR Floor Percentage in June 2017, FICC found that a VaR Floor Percentage of 5 basis points resulted in VaR Charges that did not adequately cover the market risk of certain portfolios during periods of market volatility.[18] FICC noted that an increase in the VaR Floor Percentage to 10 basis points would improve the backtesting coverage of those portfolios to 99.8%.[19] The 2017 review also revealed that when applying the Margin Proxy, a VaR Floor Percentage of 5 basis points resulted in VaR Charges that did not adequately cover certain portfolios with offsetting long and short positions within the same agency program.[20] FICC further noted that an increase in the VaR Floor Percentage to 20 basis points would better cover the risks of such portfolios.[21]

Accordingly, FICC proposes to revise the VaR Floor definition to allow FICC to adjust the VaR Floor Percentage within a specified range in order to cover FICC's credit exposure to each Clearing Member fully with a high degree of confidence.[22] FICC proposes to set the range within which it would be allowed to adjust the VaR Floor Percentage at no less than 5 basis points and no more than 30 basis points of a Clearing Member's gross unsettled positions.[23] According to FICC, the discretionary range for the VaR Floor Percentage up to 30 basis points is

[4] Capitalized terms used herein and not defined shall have the meaning assigned to such terms in the MBSD Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx*.

[5] FICC requested confidential treatment of the QRM Methodology Document and has filed it separately with the Secretary of the Commission in connection with this proposed rule change. *See* 17 CFR 240–24b–2.

[6] MBSD Rule 4, *supra* note 4.

[7] *Id.*

[8] *Id.*

[9] MBSD Rule 1, *supra* note 4.

[10] Unregistered Investment Pool Clearing Members are subject to a VaR Charge with a minimum targeted confidence level assumption of 99.5 percent. *See* MBSD Rule 4, Section 2(c), *supra* note 4.

[11] MBSD Rule 1, *supra* note 4.

[12] *Id.*

[13] *Id.*

[14] Such portfolios can represent large gross positions, but net down to a relatively low VaR Charge amount.

[15] For example, certain TBAs may have highly correlated historical price returns despite having different coupons and, although the net risk exposure may be adequately modeled under current market conditions, future market conditions could cause the risk relationship to change in a way that may not be adequately captured by the model. TBA is defined in MBSD Rule 1. *See* MBSD Rule 1, *supra* note 4.

[16] MBSD Rule 1, *supra* note 4.

[17] *Id.*

[18] The 2017 review revealed that during periods of market volatility, a VaR Floor Percentage of 5 basis points resulted in VaR Charges that did not adequately cover portfolios containing long-short positions (*e.g.,* a portfolio that was long the GNMA II/FNMA basis at a higher coupon and short the GNMA II/FNMA basis at a lower coupon). Notice, *supra* note 3 at 39043.

[19] *Id.*

[20] The Margin Proxy allows for further netting among positions within the same agency program than would occur using the model-based volatility calculation. Notice, *supra* note 3 at 39043.

[21] FICC conducted an impact study for the twelve months ending February 2019, and found that in the Margin Proxy scenario, a VaR Floor Percentage of 20 basis points would improve backtesting coverage to 99% for 11 of the 14 portfolios that would have been below 99% based on a VaR Floor Percentage of 5 basis points. Additionally, FICC found that increasing the VaR Floor Percentage to 20 basis points would reduce the number of backtesting deficiencies associated with the 3 small portfolios that would have remained below the 99% confidence level (from 45 deficiencies to 11). FICC states that it would utilize another margin charge (the Backtesting Charge) to further mitigate any remaining exposure. Notice, *supra* note 3 at 39043.

[22] *Id.*

[23] *Id.*

appropriate because it will enable FICC to make timely adjustments that would ensure the VaR Charge remains adequate if market conditions change.[24]

FICC's discretion to adjust the VaR Floor Percentage would be subject to the governance process set forth in the Clearing Agency Model Risk Management Framework (''Framework'') [25] applicable to model performance concerns. Specifically, the Model Validation and Control Group (''MVC'') would escalate any proposed VaR Floor Percentage adjustment to the Model Risk Governance Committee (''MRGC''), which, in turn, would escalate the proposed adjustment to the Management Risk Committee and/or Risk Committee of the Board for approval.[26] Additionally, FICC proposes to review, on at least an annual basis, the impact of alternative VaR Floor Percentages within the proposed range of 5 to 30 basis points to the backtesting performance and to Clearing Members' margin charges.[27]

Upon Commission approval of the proposed rule change, FICC proposes to initially set the VaR Floor at 10 basis points when there is sufficient data to generate the model-based volatility calculation, and 20 basis points when there is insufficient data for the model-based volatility calculation (*i.e.,* when the Margin Proxy is used).[28]

### *C. Notifications to Clearing Members of Changes to VaR Floor Percentage*

For any adjustment to the VaR Floor Percentage that would fall within the proposed range, FICC would issue an Important Notice no later than 10 Business Days prior to the implementation of the adjustment. FICC states that providing notice in advance of the implementation of an adjustment is designed to provide Clearing Members with time to adjust to any new VaR Charge amounts that would result from an adjustment to the VaR Floor Percentage.[29] FICC believes that 10 Business Days' prior notice would provide Clearing Members with sufficient time to prepare for any new VaR Charge amounts and thereby ensure that the Clearing Members have the funds to satisfy their new VaR Charge amounts.[30]

For adjustments that would fall outside of the proposed range, FICC has represented that it would submit a rule filing to the Commission.[31] As proposed, FICC would not apply a VaR Floor Percentage that is less than 5 basis points (which is the current VaR Floor Percentage); however, the proposed change would allow FICC to adjust the VaR Floor Percentage above 5 basis points (up to 30 basis points).

### *D. Model Performance Monitoring of VaR Floor Percentage*

The Framework provides that, as part of model performance monitoring, on at least a monthly basis, FICC: (1) Performs a sensitivity analysis on its margin model; (2) reviews the key parameters and assumptions for backtesting; and (3) considers modifications to ensure its backtesting practices are appropriate for determining the adequacy of applicable margin resources.[32] The Framework also states that MVC performs a model validation for each FICC model approved for use in production not less than annually, including, among other things, on its margin systems and related models. [33]

The VaR Floor Percentage is currently subject to periodic model validations as part of FICC's margin model validation on at least an annual basis to determine if the VaR Floor Percentage would remain adequate to cover FICC's credit exposure to Clearing Members with certain types of portfolios fully with a high degree of confidence.[34] FICC proposes to designate the VaR Floor Percentage as a parameter of its VaR model that will be reviewed on at least a monthly basis per the Framework. As such, FICC proposes to amend the QRM Methodology Document to state that FICC would conduct model performance monitoring of the VaR Floor Percentage on at least a monthly basis.

### *E. Technical Changes*

FICC proposes several technical changes to the MBSD Rules to restate the calculation of the VaR Floor to provide more detail than the current provision and to use the defined terms ''Long Positions'' [35] and ''Short Positions.'' [36] Specifically, FICC would add a new sentence stating: ''Such VaR Floor will be determined by multiplying the sum of the absolute values of Long Positions and Short Positions, at market value, by a percentage designated by the Corporation that is no less than 0.05% and no greater than 0.30%. [FICC] shall determine the percentage within this range to be applied based on factors including but not limited to a review performed at least annually of the impact of the VaR Floor parameter at different levels within the range to the backtesting performance and to Clearing Members' margin charges. [FICC] shall inform Clearing Members of the applicable percentage utilized by the VaR Floor by an Important Notice issued no later than 10 Business Days prior to the implementation of such percentage.''

Finally, FICC proposes a technical change to the QRM Methodology Document to reference that there will be at least annual model validation of the VaR Floor Percentage.[37] FICC states that the purpose of the proposed technical changes is to enhance the clarity and accuracy of the MBSD Rules and the QRM Methodology Document.[38]

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [39] 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 rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Sections

[24] *Id.*

[25] *See* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008) (''Framework Approval Order''). The Framework sets forth the model risk management practices adopted by FICC, National Securities Clearing Corporation, and The Depository Trust Company. The Framework is designed to help identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models. The Framework describes: (i) Governance of the Framework; (ii) key terms; (iii) model inventory procedures; (iv) model validation procedures; (v) model approval process; and (vi) model performance procedures.

[26] Framework Approval Order, *supra* note 25 at 41436; Notice, *supra* note 3 at 39042.

[27] Notice, *supra* note 3 at 39042.

[28] Notice, *supra* note 3 at 39042–43.

[29] Notice, *supra* note 3 at 39044.

[30] *Id.*

[31] Notice, *supra* note 3 at 39042.

[32] Framework Approval Order, *supra* note 25 at 41437; Notice, *supra* note 3 at 39042.

[33] Framework Approval Order, *supra* note 25 at 41434; Notice, *supra* note 3 at 39042.

[34] *See id.*

[35] The term ''Long Position'' means a Member's obligations with respect to the purchase of an Eligible Security or an Option Contract, as determined pursuant to the MBSD Rules. MBSD Rule 1, *supra* note 4.

[36] The term ''Short Position'' means a Member's obligation with respect to the sale of an Eligible Security or an Option Contract, as determined pursuant to the MBSD Rules. MBSD Rule 1, *supra* note 4.

[37] The QRM methodology Document currently provides that the VaR Floor Percentage is reviewed annually and updated. Notice, *supra* note 3 at 39043.

[38] Notice, *supra* note 3 at 39044.

[39] 15 U.S.C. 78s(b)(2)(C).

17A(b)(3)(F)[40] of the Act and Rules 17Ad–22(e)(4)(i),[41] (e)(6)(i),[42] and (e)(23)(ii),[43] each promulgated under the Act, for the reasons described below.

*A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[44]

First, as described above in Section II.B., FICC states that the current VaR Floor Percentage of 5 basis points has resulted in VaR Charges that do not adequately cover FICC's exposure to certain Clearing Member portfolios. FICC's proposal for the ability to adjust the VaR Floor Percentage from 5 basis points up to 30 basis points would better enable FICC to collect margin amounts commensurate with its credit exposure to the types of Clearing Member portfolios not adequately covered using a VaR Floor Percentage of 5 basis points. FICC's collection of margin amounts commensurate with its credit exposures would help ensure that FICC maintains adequate funds necessary to manage the risks associated with performing its clearance and settlement functions. Accordingly, the Commission finds the proposal to allow FICC to adjust the VaR Floor Percentage from 5 basis points up to 30 basis points would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[45] Moreover, FICC's collection of margin amounts commensurate with the credit exposure presented by each Clearing Member portfolio should help ensure that, in the event of a Clearing Member default, FICC's operations would not be disrupted and non-defaulting Clearing Members would not be exposed to losses that they cannot anticipate or control. Accordingly, the Commission finds the proposal to allow FICC to adjust the VaR Floor Percentage from 5 basis points up to 30 basis points should safeguard the securities and funds that are in FICC's custody or control or for which FICC is responsible, consistent with Section 17A(b)(3)(F) of the Act.[46]

Second, as described above in Section II.C., FICC states that it designed the proposal to provide 10 Business Days' notice to Clearing Members prior to implementing any adjustment to the VaR Floor Percentage in order to provide Clearing Members with sufficient time prepare for any new VaR Charge amounts and thereby ensure that Clearing Members are able to satisfy their Required Fund Deposit amounts. Providing such notice in advance of implementing any adjustment to the VaR Floor Percentage would help Clearing Members prepare to meet their margin obligations, and thereby facilitate FICC's collection of adequate margin amounts necessary to manage the risks associated with performing its clearance and settlement functions, as well as help ensure that, in the event of a Clearing Member default, FICC's operations would not be disrupted and non-defaulting Clearing Members would not be exposed to losses that they cannot anticipate or control. Accordingly, the Commission finds the proposal to provide 10 Business Days' notice to Clearing Members prior to implementing any adjustment to the VaR Floor Percentage should: (1) Promote the prompt and accurate clearance and settlement of securities transactions; and (2) safeguard the securities and funds that are in FICC's custody or control or for which FICC is responsible, consistent with Section 17A(b)(3)(F) of the Act.[47]

Third, as described above in Section II.D., the VaR Floor Percentage is currently subject to periodic model validations as part of FICC's margin model validation on at least an annual basis. FICC proposes to increase the frequency of this review by designating the VaR Floor Percentage as a parameter of its VaR model to be reviewed on at least a monthly basis. More frequent reviews would alert FICC of the need to adjust the VaR Floor Percentage and would enable FICC to make such adjustments in a more timely manner. Thus, more frequent reviews of the VaR Floor Percentage would help FICC ensure that it collects margin amounts commensurate with the credit risks presented by each Clearing Member portfolio. FICC's collection of margin amounts commensurate with the credit exposure presented by each Clearing Member portfolio should help ensure that, in the event of a Clearing Member default, FICC's operations would not be disrupted and non-defaulting Clearing Members would not be exposed to losses that they cannot anticipate or control. Accordingly, the Commission finds the proposal for FICC to review the VaR Floor Percentage on at least a monthly basis would safeguard the securities and funds that are in FICC's custody or control or for which FICC is responsible, consistent with Section 17A(b)(3)(F) of the Act.[48]

Fourth, as described above in Section II.E., FICC designed the proposed technical changes to enhance the clarity and accuracy of the MBSD Rules and the QRM Methodology Document. Enhancing the clarity and accuracy of the MBSD Rules helps to provide Clearing Members with a better understanding of their rights and obligations thereunder. A better understanding of Clearing Member rights and obligations would reasonably help to increase the predictability and certainty of Clearing Member interactions with FICC, which, in turn, would better enable FICC to perform its clearance and settlement functions. Additionally, since the QRM Methodology Document is used by FICC Risk Management personnel, enhanced clarity regarding the frequency of model validation of the VaR Floor Percentage would better enable FICC personnel to perform the related risk management functions that support FICC's clearance and settlement activities. Accordingly, the Commission finds the proposed technical changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[49]

*B. Consistency With Rule 17Ad–22(e)(4)(i) Under the Act*

Rule 17Ad–22(e)(4)(i) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[50]

As described above in Section II.D., FICC's proposal to conduct at least monthly reviews of the VaR Floor Percentage is designed to help FICC more effectively identify, measure, monitor, and manage its credit exposure to each Clearing Member portfolio by increasing the frequency of review from annually to monthly and thereby enabling FICC to identify the need for

[40] 15 U.S.C. 78q–1(b)(3)(F)
[41] 17 CFR 240.17Ad–22(e)(4)(i).
[42] 17 CFR 240.17Ad–22(e)(6)(i).
[43] 17 CFR 240.17Ad–22(e)(23)(ii).
[44] 15 U.S.C. 78q–1(b)(3)(F).
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] 17 CFR 240.17Ad–22(e)(4)(i).

adjustments to the VaR Floor Percentage in a more timely manner. Additionally, as described above in Section II.B., FICC's proposed ability to adjust the VaR Floor Percentage within the range of 5 to 30 basis points is designed to better enable FICC to limit its credit exposure to certain Clearing Member portfolios in the event that the model-based volatility calculation (or Margin Proxy, if used) yield too low a VaR Charge for such portfolios. As described above in Sections II.B. and C., FICC's proposals for the ability to adjust the VaR Floor Percentage within the range of 5 to 30 basis points, as well as the provision of prior notice of such adjustments to Clearing Members, are designed to help FICC better manage its credit exposure to Clearing Members by collecting sufficient margin with respect to each Clearing Member portfolio. Accordingly, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(4)(i) under the Act.[51]

*C. Consistency With Rule 17Ad–22(e)(6)(i) Under the Act*

Rule 17Ad–22(e)(6)(i) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, 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.[52]

FICC's proposals to: (1) Monitor the VaR Floor Percentage; (2) adjust the VaR Floor Percentage in the event that other calculations result in VaR Charges that do not adequately cover the risks presented by certain Clearing Member portfolios; and (3) notify Clearing Members in advance of any adjustment to the VaR Floor Percentage, are designed to cover FICC's credit exposure to Clearing Member portfolios where such exposure has not been adequately covered in the past. Specifically, the proposal to allow FICC to adjust the VaR Floor Percentage from 5 basis points up to 30 basis points should help FICC to collect margin amounts commensurate with its credit exposure to the types of Clearing Member portfolios not adequately covered using a VaR Floor Percentage of 5 basis points. FICC's proposal to provide Clearing Members with notice in advance of implementing any adjustment to the VaR Floor Percentage should help Clearing Members prepare to meet their margin obligations, and thereby facilitate FICC's collection of margin amounts commensurate with affected Clearing Member portfolios. FICC's proposal to increase the frequency with which it reviews the VaR Floor Percentage from annually to monthly should alert FICC of the need to adjust the VaR Floor Percentage and make such adjustments in a more timely manner. Thus, the increased frequency of review would further help FICC ensure that it collects margin amounts commensurate with the credit risks presented by each Clearing Member portfolio. For these reasons, the Commission finds the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(6)(i) under the Act.[53]

*D. Consistency With Rule 17Ad–22(e)(23)(ii) Under the Act*

Rule 17Ad–22(e)(23)(ii) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[54]

As described above in Section II.E., FICC's proposed technical changes to the MBSD Rules would provide more details as to how the VaR Floor is calculated than is currently set forth in the MBSD Rules. Providing more comprehensive written information in the MBSD Rules regarding the VaR Floor would enable Clearing Members to better understand how the VaR Floor operates, which, in turn, should enable Clearing Members to better evaluate the costs of participating in FICC. Accordingly, the Commission finds the proposed technical changes to the MBSD Rules are consistent with Rule 17Ad–22(e)(23)(ii) under the Act.[55]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act[56] and the rules and regulations promulgated thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act[57] that proposed rule change SR–FICC–2019–003, be, and hereby is, *approved*.[58]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20011 Filed 9–16–19; 8:45 am]

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[51] *Id.*

[52] 17 CFR 240.17Ad–22(e)(6)(i).

[53] *Id.*

[54] 17 CFR 240.17Ad–22(e)(23)(ii).

[55] *Id.*

[56] 15 U.S.C. 78q–1.

[57] 15 U.S.C. 78s(b)(2).

[58] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[59] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86938; File No. SR–NASDAQ–2019–048]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Establish the "Midpoint Extended Life Order + Continuous Book" as a New Order Type

September 11, 2019.

### I. Introduction

On May 29, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Midpoint Extended Life Order + Continuous Book (''M–ELO+CB'') as a new order type. The proposed rule change was published for comment in the **Federal Register** on June 17, 2019.[3] On July 1, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed. On July 30, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On July 31, 2019, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86083 (June 11, 2019), 84 FR 28107.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 86512, 84 FR 38078 (August 5, 2019). The Commission

Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change, as modified by Amendment No. 1.[6] On August 30, 2019, the Exchange filed Amendment No. 3 to the proposed rule change.[7] The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

## II. Description of the Proposal

Currently, the Exchange offers the Midpoint Extended Life Order (''M–ELO'').[8] A M–ELO is a non-displayed order priced at the midpoint between the National Best Bid and National Best Offer (''NBBO'') that is not eligible for execution until it completes a one-half second holding period (''Holding Period'').[9] Once eligible to trade, M–ELOs may only execute against other M–ELOs.[10]

The Exchange now proposes to adopt M–ELO+CB as a variation on the M–ELO concept. That is, a M–ELO+CB would be an order type that has all of the characteristics and attributes of a M–ELO, except that, in addition to executing against other M–ELO+CBs and M–ELOs, it would also be able to execute against certain ''M–ELO-like'' orders on the Exchange's continuous book.[11] Specifically, a M–ELO+CB would be subject to the same one-half second Holding Period as a M–ELO. A M–ELO+CB that satisfies the Holding Period would be eligible to execute, at the NBBO midpoint, against other eligible M–ELO+CBs and eligible M–ELOs.[12] However, unlike a M–ELO, the M–ELO+CB would also be eligible to execute, at the NBBO midpoint, against non-displayed orders with midpoint pegging and midpoint peg post-only orders (collectively, ''Midpoint Orders'') resting on the Exchange's continuous book, if: (1) The Midpoint Order has the midpoint trade now order attribute enabled; [13] (2) the Midpoint Order has rested on the continuous book for at least one-half second after the NBBO midpoint falls within the limit price set by the participant; [14] (3) no other order is resting on the continuous book that has a more aggressive price than the current NBBO midpoint; and (4) the Midpoint Order satisfies any minimum quantity requirement of the M–ELO+CB.[15] A buy (sell) M–ELO+CB would be ranked in time order at the NBBO midpoint among other buy (sell) M–ELO+CBs, buy (sell) M–ELOs, and buy (sell) Midpoint Orders, as of the time when such orders become eligible to execute (*i.e.,* the time at which they exit their respective one-half second Holding Periods or resting periods, as applicable, and satisfy any other conditions for marketability).[16]

In all other respects, a M–ELO+CB would be identical to a M–ELO. For example, a M–ELO+CB may be assigned a limit price, in which case it would be: (1) Eligible for execution in time priority after satisfying the Holding Period if, upon acceptance of the order by the system, the midpoint price is within the limit price set by the participant; or (2) held until the midpoint falls within the limit price set by the participant, at which time the Holding Period would commence and thereafter the system would make the order eligible for execution in time priority.[17] If a M–ELO+CB is modified by a member (other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt) during the Holding Period, the system would restart the Holding Period.[18] If a M–ELO+CB is modified by a member (other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt) after it is eligible to execute, the order would have to satisfy a new Holding Period to become eligible to execute. If the NBBO changes while a M–ELO+CB is in the Holding Period, the Holding Period would not reset, even if, as a result of the NBBO change, the M–ELO+CB's limit price is less aggressive than the NBBO midpoint.[19] If a M–ELO+CB satisfies the Holding Period, but the NBBO midpoint is no longer within its limit, it would nonetheless be ranked in time priority among other M–ELO+CBs, M–ELOs, and Midpoint Orders if the NBBO later moves such that the midpoint is within the order's limit price (*i.e.,* the Holding Period would not reset).[20]

If there is no National Best Bid or National Best Offer, the Exchange would accept M–ELO+CBs but would not allow M–ELO+CB executions until there is an NBBO.[21] M–ELO+CBs would be eligible to execute if the NBBO is locked.[22] If the NBBO is crossed, M–ELO+CBs would be held by the system until the NBBO is no longer crossed, at which time they would be eligible to

designated September 15, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 2, the Exchange revised the proposal to: (1) Explain in greater detail the order entry protocols available for M–ELO+CBs; (2) provide additional specificity about the resting period for midpoint orders; (3) provide additional specificity about the execution priority of M–ELO+CBs, M–ELOs, and midpoint orders; (4) conform the proposal to a recently approved proposed rule change permitting M–ELOs to be entered in odd-lot sizes; (5) specify that any punitive fees or participant requirements determined to be necessary by the Exchange for M–ELO+CB usage would be implemented pursuant to a future proposed rule change; and (6) make technical, clarifying, and conforming changes. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-048/srnasdaq2019048-5898749-188829.pdf.*

[7] In Amendment No. 3, the Exchange further revised the proposal to: (1) Clarify that the statistical information it proposes to publish for M–ELO+CBs would be aggregated with the statistical information it currently publishes for M–ELOs; (2) clarify the circumstances in which modification of a M–ELO+CB or midpoint order would trigger a new holding or resting period; and (3) make technical and conforming changes. Amendment No. 3 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-048/srnasdaq2019048-6049836-191368.pdf.*

[8] *See* Rule 4702(b)(14)(A). *See also* Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (''Original M–ELO Approval Order'') (order approving SR–NASDAQ–2017–074).

[9] *See* Rule 4702(b)(14)(A).

[10] *See id.*

[11] *See* proposed Rule 4702(b)(15). Also, unlike M–ELOs, M–ELO+CBs may be entered via any of the Exchange's order entry protocols except for QIX. *See id.;* Amendment No. 2, *supra* note 6, at 5 n.6, 7. The type of protocol used would not affect how the system handles M–ELO+CBs. *See* Amendment No. 2, *supra* note 6, at 7.

[12] *See* proposed Rule 4702(b)(15).

[13] The midpoint trade now order attribute currently allows a resting order that becomes locked at its non-displayed price by an incoming midpoint peg post-only order to automatically execute against crossing or locking interest, including potentially against the locking midpoint peg post-only order, as a liquidity taker. *See* Rule 4703(n). The Exchange proposes to amend the midpoint trade now order attribute to provide that, in addition to the functionality the attribute currently provides, enabling the attribute would also permit a Midpoint Order to execute against a M–ELO+CB, provided that the Midpoint Order meets the eligibility requirements for doing so. *See* proposed Rule 4703(n). The Exchange also proposes to specify that, if there is a resting Midpoint Order on the Nasdaq book without the midpoint trade now order attribute, a new incoming Midpoint Order with the midpoint trade now order attribute will be able to execute against a M–ELO+CB (after meeting the eligibility requirements). *See id.* The resting Midpoint Order without the midpoint trade now order attribute will thereafter remain on the Nasdaq book and retain its priority relative to other resting orders on the same side of the market. *See id.*

[14] If a Midpoint Order with the midpoint trade now order attribute enabled is modified during its resting period or after its resting period elapses, other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt, such modification would trigger a new resting period for the Midpoint Order. *See* Amendment No. 3, *supra* note 7, at 4.

[15] *See* proposed Rule 4702(b)(15).

[16] *See id.;* Amendment No. 2, *supra* note 6, at 6.

[17] *See* Amendment No. 2, *supra* note 6, at 6–7.

[18] *See id.* at 7.

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.*

trade.[23] M–ELO+CBs may be cancelled at any time, including during the Holding Period.[24]

M–ELO+CBs would only be active during market hours.[25] Specifically, M–ELO+CBs entered during pre-market hours would be held by the system in time priority until market hours begin, M–ELO+CBs entered during post-market hours would not be accepted by the system, and M–ELO+CBs remaining unexecuted after 4:00 p.m. Eastern time would be cancelled by the system.[26] M–ELO+CBs would not be eligible for the Exchange's opening, halt, and closing crosses.[27] M–ELO+CBs may be entered in any size and may have a minimum quantity order attribute.[28] M–ELO+CBs may not be designated with a time-in-force of immediate or cancel, are ineligible for routing, and may not have the discretion, reserve size, attribution, intermarket sweep order, display, trade now, or midpoint trade now order attributes.[29]

M–ELO+CB executions would be reported to securities information processors and provided in the Exchange's proprietary data feed without any new or special indication.[30] The Exchange would, however, include in its existing volume reports delayed weekly aggregated statistics, as well as delayed monthly aggregated block-sized trading statistics, for M–ELO+CB executions.[31] Specifically, the Exchange would include M–ELO+CB executions in the existing reports it publishes on *Nasdaqtrader.com* that provide weekly aggregated statistics showing the number of shares and transactions of M–ELOs executed on the Exchange by security.[32] The Exchange would also include M–ELO+CB executions in the existing reports it publishes on *Nasdaqtrader.com* that provide monthly aggregated block-sized trading statistics of total shares and total transactions of M–ELOs executed on the Exchange.[33]

The Exchange represents that, as part of the surveillance it currently performs, M–ELO+CBs would be subject to real-time surveillance to determine if they are being abused by market participants.[34] In addition, as is the case for M–ELOs, the Exchange represents that it will monitor the use of M–ELO+CBs with the intent to apply additional measures, as necessary, to ensure their usage is appropriately tied to the intent of the order type.[35] According to the Exchange, manipulative abuse is subject to potential disciplinary action under the Exchange's rules, and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of the M–ELO+CB order type may be subject to penalties or other participant requirements to discourage such behavior, should it occur.[36]

The Exchange plans to implement M–ELO+CB within thirty days after its approval, and will announce the specific implementation date by Equity Trader Alert.[37] The Exchange states that it will make M–ELO+CB available to all members and to all securities upon implementation.[38]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[39] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[40] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,[41] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has carefully considered the proposal and finds that it is consistent with the Act. In its original order approving M–ELO on the Exchange, the Commission noted its belief that the M–ELO order type could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and could provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.[42] While M–ELOs are currently limited to executing only against other M–ELOs, the Commission believes that the Exchange's proposal to introduce M–ELO+CBs, which would be able to interact with eligible Midpoint Orders, in addition to M–ELO+CBs and M–ELOs, could create opportunities for Exchange participants to utilize a variation of the M–ELO order type consistent with the intended purpose of the order type. In particular, the proposal would provide Exchange participants with the flexibility to allow their orders to interact with ''M–ELO-like'' interest on the Exchange's order book. As with M–ELOs, the Commission believes that M–ELO+CBs represent a reasonable effort to further enhance the

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.* at 7–8.

[27] *See* proposed Rule 4703(*l*).

[28] *See* Amendment No. 2, *supra* note 6, at 8. *See also* Securities Exchange Act Release No. 86416 (July 19, 2019), 84 FR 35918 (July 25, 2019) (order approving SR–NASDAQ–2019–044 to allow M–ELOs to be odd lot-sized).

[29] *See* Amendment No. 2, *supra* note 6, at 8.

[30] *See id.*

[31] *See id.*

[32] *See id.;* Amendment No. 3, *supra* note 7, at 5, 8 (clarifying that the weekly statistical information published by the Exchange would aggregate both M–ELO and M–ELO+CB executions). This information would be published with a two-week delay for NMS stocks in Tier 1 of the LULD Plan, and a four-week delay for all other NMS stocks. *See* Amendment No. 2, *supra* note 6, at 8.

[33] *See* Amendment No. 2, *supra* note 6, at 8–9; Amendment No. 3, *supra* note 7, at 5, 8 (clarifying that the monthly statistical information published by the Exchange would aggregate both M–ELO and M–ELO+CB executions). A transaction would be considered ''block-sized'' if it meets any of the following criteria: (1) 10,000 or more shares; (2) $200,000 or more in value; (3) 10,000 or more shares and $200,000 or more in value; (4) 2,000 to 9,999 shares; (5) $100,000 to $199,999 in value; or (6) 2,000 to 9,999 shares and $100,000 to $199,999 in value. *See* Amendment No. 2, *supra* note 6, at 9. This information would be published no earlier than one month following the end of the month for which trading was aggregated. *See id.*

[34] *See* Amendment No. 2, *supra* note 6, at 9.

[35] *See id.* The Exchange states that this monitoring may include metrics tied to participant behavior, such as the percentage of M–ELO+CBs that are cancelled prior to the completion of the Holding Period, the average duration of M–ELO+CBs, and the percentage of M–ELO+CBs where the NBBO midpoint is within the limit price when received. *See id.*

[36] *See id.* Should the Exchange determine that they are necessary to maintain a fair and orderly market, any punitive fees or other participant requirements tied to M–ELO+CB usage would be implemented by rule filing under Section 19(b) of the Act. *See id.* at 9 n.11.

[37] *See id.* at 11. The Exchange notes that it plans to propose a fee structure for M–ELO+CB in a subsequent proposed rule change. *See id.* at 11 n.13.

[38] *See id.* at 11.

[39] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78f(b)(8).

[42] *See* Original M–ELO Approval Order, *supra* note 8, at 10938–39.

ability of longer-term trading interest to participate effectively on an exchange.

The Commission also believes that the proposal to use the midpoint trade now order attribute to allow Midpoint Orders to execute against M–ELO+CBs would provide Exchange participants entering Midpoint Orders with additional control over the execution of their orders, specifically by allowing participants to choose whether to enable the order attribute in order to execute against M–ELO+CBs.

The Commission believes that the proposal to include M–ELO+CB executions in the Exchange's published statistics for M–ELO executions is reasonably designed to provide additional transparency regarding M–ELO+CB executions on the Exchange without undermining the usefulness of the M–ELO and M–ELO+CB order types by limiting the potential information leakage and the resulting market impact that could be associated with non-delayed identification of individual M–ELO or M–ELO+CB executions.

Finally, the Commission believes that the Exchange's proposed surveillance measures are reasonably designed to deter potential improper use of the proposed M–ELO+CB order type. In particular, the Commission notes that the Exchange has represented that, as it does for M–ELOs, it will conduct real-time surveillance to monitor the use of M–ELO+CBs and ensure that such usage is appropriately tied to the intent of the order type.[43] The Exchange has also represented that it will continue to evaluate whether additional measures may be necessary to ensure that M–ELO+CBs are used in a manner consistent with the intended purpose of the order type.[44]

Based on the foregoing and the Exchange's representations in its proposal, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the Act.

## IV. Solicitation of Comments on Amendment Nos. 2 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–048 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–048, and should be submitted on or before October 8, 2019.

## V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 2 and 3 in the **Federal Register**. As discussed above, in Amendment No. 2, the Exchange revised the proposal to: (1) Explain in greater detail the order entry protocols available for M–ELO+CBs; (2) provide additional specificity about the resting period for Midpoint Orders; (3) provide additional specificity about the execution priority of M–ELO+CBs, M–ELOs, and Midpoint Orders; (4) conform the proposal to a recently approved proposed rule change permitting M–ELOs to be entered in odd-lot sizes; (5) specify that any punitive fees or participant requirements determined to be necessary by the Exchange for M–ELO+CB usage would be implemented pursuant to a future proposed rule change; and (6) make technical, clarifying, and conforming changes. Also as discussed above, in Amendment No. 3, the Exchange further revised the proposal to: (1) Clarify that the statistical information it proposes to publish for M–ELO+CBs would be aggregated with the statistical information it currently publishes for M–ELOs; (2) clarify the circumstances in which modification of a M–ELO+CB or Midpoint Order would trigger a new holding or resting period; and (3) make technical and conforming changes. The Commission believes that Amendment Nos. 2 and 3 do not raise any novel regulatory issues or make any significant substantive changes to the original proposal, which was subject to a full notice and comment period during which no comments were received. The Commission also notes that Amendment Nos. 2 and 3 provide additional accuracy, clarity, and justification to the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[45] to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–NASDAQ–2019–048), as modified by Amendment Nos. 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019–20018 Filed 9–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[43] *See* Amendment No 2, *supra* note 6, at 9.

[44] *See id.*

[45] 15 U.S.C. 78s(b)(2).

[46] *Id.*

[47] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16111 and #16112; Louisiana Disaster Number LA–00093]**

### Administrative Declaration of a Disaster for the State of Louisiana

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 09/11/2019.

*Incident:* Hurricane Barry.

*Incident Period:* 07/10/2019 through 07/15/2019.

**DATES:** Issued on 09/11/2019.

*Physical Loan Application Deadline Date:* 11/12/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/11/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Parishes:* Allen, Avoyelles, Saint Mary.

*Contiguous Parishes:*

Louisiana: Assumption, Beauregard, Catahoula, Concordia, Evangeline, Iberia, Jefferson Davis, La Salle, Pointe Coupee, Rapides, Saint Landry, Saint Martin, Terrebonne, Vernon, West Feliciana.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.875 |
| Homeowners without Credit Available Elsewhere | 1.938 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 16111 8 and for economic injury is 16112 0.

The State which received an EIDL Declaration # is Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

**Christopher Pilkerton,**

*Acting Administrator.*

[FR Doc. 2019–20052 Filed 9–16–19; 8:45 am]

**BILLING CODE 8026–03–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. EP 761; Docket No. EP 722]**

### Hearing on Revenue Adequacy; Railroad Revenue Adequacy

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Public Hearing.

**SUMMARY:** The Surface Transportation Board (Board) will hold a public hearing on December 12, 2019, on revenue adequacy issues raised in the report issued by the Board's Rate Reform Task Force (RRTF). The hearing will be held in the James E. Webb Memorial Auditorium of the National Aeronautics and Space Administration (NASA), located at 300 E Street SW, Washington, DC. All interested persons are invited to appear.[1]

**DATES:** The hearing will be held on December 12, 2019, beginning at 9:30 a.m., in NASA's James E. Webb Memorial Auditorium and will be open for public observation. Any person wishing to speak at the hearing should file with the Board a notice of intent to participate (identifying the party, proposed speaker, and amount of time requested) no later than October 31, 2019. All hearing participants are required to submit written testimony by November 26, 2019. Written submissions by interested persons who will not appear at the hearing should also be filed by November 26, 2019.

**ADDRESSES:** All filings, referring to Docket No. EP 761 et al., must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001.

Filings will be posted to the Board's website and need not be served on the other hearing participants or written commenters. Copies of the filings will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW, Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** In April 2014, the Board instituted a proceeding in Docket No. EP 722 and invited interested persons to comment on the Board's methodology for determining revenue adequacy, the revenue adequacy component for judging the reasonableness of rail freight rates, and what, if any, changes the Board should consider. *See R.R. Revenue Adequacy,* EP 722 et al., slip op. at 4 (STB served Apr. 2, 2014). The Board held a public hearing on those issues in 2015.[2]

In January 2018, the Board established its RRTF with the objectives of developing recommendations to reform and streamline the Board's rate review process for large cases, and determining how to best provide a rate review process for smaller cases. After holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (RRTF Report).[3] The RRTF Report recommended, among other things, that the Board consider policy changes regarding revenue adequacy. RRTF Report 12–13, 32–42.

The Board will hold a public hearing on December 12, 2019, and invites interested persons to provide input on the RRTF's recommendations regarding revenue adequacy.[4] All hearing participants are required to submit written testimony by November 26,

[1] These proceedings are not consolidated. A single decision is being issued for administrative purposes.

[2] The Board subsequently clarified that informal discussions between the agency and stakeholders are permitted in the proceeding. *See R.R. Revenue Adequacy,* EP 722, slip op. at 1–2 (STB served Mar. 28, 2018).

[3] The RRTF Report was posted on the Board's website on April 29, 2019, and can be accessed at *https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf.*

[4] Under 49 U.S.C. 10701(d)(2), when determining whether a rate is reasonable, the Board is directed to give due consideration to three factors, recognizing the policy that ''rail carriers shall earn adequate revenues.'' The Board is required to ''annually determine which rail carriers are earning adequate revenues.'' 49 U.S.C. 10704(a)(3); *see, e.g., R.R. Revenue Adequacy—2017 Determination,* EP 552 (Sub-No. 22) (STB served Dec. 21, 2018). This annual determination is distinct from long-term revenue adequacy, which ''calls for a company, *over time,* to average return on investment equal to its cost of capital.'' *Coal Rate Guidelines, Nationwide,* 1 I.C.C.2d 520, 536 (1985).

2019. Written submissions by interested persons who will not appear at the hearing should also be filed by November 26, 2019. All participants and interested persons are asked to address the following RRTF recommendations in their written testimony or submissions and at the hearing:

• Definition of long-term revenue adequacy: The RRTF recommended determining long-term revenue adequacy by looking at the annual determinations over ''the shortest period of time, not less than five years, that includes both a year in which a recession began and a year that follows a year in which a recession began.'' RRTF Report 13, 33.

• Rate increase constraint: The RRTF recommended considering a rate increase constraint for long-term revenue-adequate carriers, which would identify a point beyond which further application of differential pricing would be unwarranted. *See* RRTF Report 13, 36–39.

• Bottleneck changes: The RRTF recommended considering suspension of the Board's *Bottleneck*[5] protections as applied to long-term revenue-adequate carriers. *See* RRTF Report 13, 39–41.

• Simplified Stand-Alone Cost (Simplified-SAC) changes: For purposes of considering whether a long-term revenue-adequate carrier's rate is reasonable under Simplified-SAC, the RRTF recommended reinstating the simplification of the Road Property Investment analysis. *See* RRTF Report 13, 41–42, & app. B.

*Board Releases and Transcript Availability:* Decisions and notices of the Board, including this notice, are available on the Board's website at *www.stb.gov.* The Board will issue a separate notice containing instructions for attendance at the hearing and the schedule of appearances. *Please note that streaming and recording systems will not be available for this hearing.* As soon as a transcript is available, it will be posted on the Board's website.

*It is ordered*

1. A public hearing will be held on December 12, 2019, at 9:30 a.m., in the James E. Webb Memorial Auditorium of the National Aeronautics and Space Administration (NASA), located at 300 E Street SW, Washington, DC.

2. By October 31, 2019, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the party, the proposed speaker, and the amount of time requested.

3. Written testimony by hearing participants, and written submissions by interested persons who will not appear at the hearing, shall be filed by November 26, 2019.

4. Filings will be posted to the Board's website and need not be served on any hearing participants or other commenters.

5. This decision is effective on its service date.

6. This decision will be published in the **Federal Register**.

Decided: September 12, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2019–20076 Filed 9–16–19; 8:45 am]

**BILLING CODE 4915–01–P**

[5] *See Cent. Power & Light Co.* v. *S. Pac. Transp. Co.,* 1 S.T.B. 1059 (1996), *clarified,* 2 S.T.B. 235 (1997), *aff'd sub nom. MidAmerican Energy Co.* v. *STB,* 169 F.3d 1099 (8th Cir. 1999).

## SUSQUEHANNA RIVER BASIN COMMISSION

### Projects Approved for Consumptive Uses of Water

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** August 1–31, 2019.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22 (f) for the time period specified above:

### Approvals By Rule—Issued Under 18 CFR 806.22(e)

1. Sunoco Pipeline L.P.; Mariner East 2 Pipeline Project (Middlesex Township Municipal Authority); ABR–201908015; Various Municipalities Located In Berks, Cumberland, Dauphin, Lebanon, and York Counties, Pa.; Consumptive Use of Up to 0.288 mgd; Approval Date: August 16, 2019.

2. Sunoco Pipeline L.P.; Mariner East 2 Pipeline Project (Altoona Water Authority); ABR–201908016; Various Municipalities Located In Blair and Huntingdon Counties, Pa.; Consumptive Use of Up to 0.200 mgd; Approval Date: August 27, 2019.

3. Sunoco Pipeline L.P.; Mariner East 2 Pipeline Project (Mount Union Municipal Authority); ABR–201908017; Various Municipalities Located In Blair, Huntingdon, Juniata, and Perry Counties, Pa.; Consumptive Use of Up to 0.200 mgd; Approval Date: August 27, 2019.

4. Sunoco Pipeline L.P.; Mariner East 2 Pipeline Project (PA American Water Company—Hershey District); ABR–201908018; Various Municipalities Located In Dauphin, Lebanon, and Berks Counties, Pa.; Consumptive Use of Up to 0.288 mgd; Approval Date: August 27, 2019.

5. Sunoco Pipeline L.P.; Mariner East 2 Pipeline Project (PA American Water Company—Mechanicsburg District); ABR–201908019; Various Municipalities Located In Cumberland, York, and Dauphin Counties, Pa.; Consumptive Use of Up to 0.266 mgd; Approval Date: August 27, 2019.

6. Sunoco Pipeline L.P.; Mariner East 2 Pipeline Project (Elverson Water Company, Inc.); ABR–201908020; Various Municipalities Located In Dauphin, Lebanon, Berks, and Chester Counties, Pa.; Consumptive Use of Up to 0.070 mgd; Approval Date: August 29, 2019.

### Water Source Approvals Issued Under 18 CFR 806.22(f)

1. ARD Operating, LLC; Pad ID: COP Tract 289 Pad A; ABR–20090409.R2; McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 2, 2019.

2. Chief Oil & Gas, LLC; Pad ID: Reibson Drilling Pad; ABR–201407014.R1; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: August 2, 2019.

3. Inflection Energy (PA), LLC; Pad ID: Reynolds Well Site; ABR–201908002; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 2, 2019.

4. Chesapeake Appalachia, L.L.C.; Pad ID: Hunter, ABR–201408001.R1; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 8, 2019.

5. Seneca Resources Company, LLC; Pad ID: CRV Pad C09–G; ABR–201408002.R1; Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 12, 2019.

6. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 729 Pad-A; ABR–200908003; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 12, 2019.

7. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 293 Pad-A; ABR–201908004; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 12, 2019.

8. Chesapeake Appalachia, L.L.C.; Pad ID: Eileen, ABR–20090806.R2; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 13, 2019.

9. Chesapeake Appalachia, L.L.C.; Pad ID: Claudia, ABR–20090807.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 13, 2019.

10. Chesapeake Appalachia, L.L.C.; Pad ID: Fitzsimmons, ABR–20090809.R2; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 13, 2019.

11. Chesapeake Appalachia, L.L.C.; Pad ID: Bacorn, ABR–201408003.R1; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 15, 2019.

12. EXCO Resources (PA), LLC; Pad ID: Litke 1H, 2H; ABR–20090425.R2; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 19, 2019.

13. EXCO Resources (PA), LLC; Pad ID: Litke (7H & 8H); ABR–20090426.R2; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 19, 2019.

14. EXCO Resources (PA), LLC; Pad ID: Litke (14H, 15H, 16H); ABR–20090431.R2; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 19, 2019.

15. EXCO Resources (PA), LLC; Pad ID: Barto Unit #1H, #2H; ABR–20090514.R2; Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 19, 2019.

16. Chief Oil & Gas, LLC; Pad ID: Phelps Unit #1H; ABR–20090813.R2; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 19, 2019.

17. Seneca Resources Company, LLC; Pad ID: T. Wivell Horizontal Pad; ABR–20090814.R2; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 19, 2019.

18. Chief Oil & Gas, LLC; Pad ID: PA Woodlands Drilling Pad; ABR–201408006.R1; Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: August 19, 2019.

19. Cabot Oil & Gas Corporation; Pad ID: DiazM P2; ABR–201908001; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 19, 2019.

20. EXCO Resources (PA), LLC; Pad ID: Zinck Unit #1 Pad; ABR–201908014; Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 19, 2019.

21. Cabot Oil & Gas Corporation; Pad ID: BrooksW P2; ABR–201908009; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 22, 2019.

22. Cabot Oil & Gas Corporation; Pad ID: ChudleighW P1; ABR–201908005; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 26, 2019.

23. Cabot Oil & Gas Corporation; Pad ID: Elk Lake School District P1; ABR–201908006; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 26, 2019.

24. Cabot Oil & Gas Corporation; Pad ID: BrooksJ P1; ABR–201908007; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 26, 2019.

25. Cabot Oil & Gas Corporation; Pad ID: PowersN P2; ABR–201908008; Middletown Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 26, 2019.

26. Cabot Oil & Gas Corporation; Pad ID: HunsingerA P1; ABR–201908010; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 26, 2019.

27. SWN Production Company, LLC; Pad ID: RU–72–FOLKVARD–PAD; ABR–201908011; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: August 26, 2019.

28. SWN Production Company, LLC; Pad ID: PU–BB-Price-Pad; ABR–201908012; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: August 26, 2019.

29. SWN Production Company, LLC; Pad ID: WR–22-Five E's-Pad; ABR–201908013; Middletown Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: August 26, 2019.

30. EQT Production Company; Pad ID: Hurd; ABR–20090802.R2; Ferguson Township, Clearfield County, Pa.; Consu

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: September 12, 2019.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2019–20081 Filed 9–16–19; 8:45 am]

**BILLING CODE 7040–01–P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Grandfathering (GF) Registration Notice

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** August 1–31, 2019.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above:

### Grandfathering Registration Under 18 CFR Part 806, Subpart E

1. Gratz Borough Water Revenue Fund—Gratz Borough Water Company, GF Certificate No. GF–201908042, Gratz Borough, Dauphin County, Pa.; Well 1, Bower Spring, and Cold Spring; Issue Date: August 20, 2019.

2. Carlisle Borough Municipal Authority, GF Certificate No. GF–201908043, North Middleton Township, Cumberland County, Pa.; Conodoguinet Creek; Issue Date: August 20, 2019.

3. Afton Golf Course, Inc—Afton Golf Club, GF Certificate No. GF–201908044, Town of Afton, Chenango County, N.Y.; Pond 7; Issue Date: August 20, 2019.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: September 12, 2019.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2019–20079 Filed 9–16–19; 8:45 am]

**BILLING CODE 7040–01–P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Projects Approved for Consumptive Uses of Water

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** July 1–31, 2019.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22(f) for the time period specified above:

**Water Source Approvals Issued Under 18 CFR 806.22(f)(13)**

1. Chesapeake Appalachia, L.L.C.; Pad ID: Deremer; ABR–201407001.R1; Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 1, 2019.

2. Epsilon Energy USA, Inc.; Pad ID: Devine Ridge Pad; ABR–201907001; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 15, 2019.

3. Chesapeake Appalachia, L.L.C.; Pad ID: Deer Park; ABR–201907003; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 15, 2019.

4. Chief Oil & Gas, LLC; Pad ID: SGL–12 A Drilling Pad; ABR–201407007.R1; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 23, 2019.

5. Chesapeake Appalachia, L.L.C.; Pad ID: White SUS; ABR–201407008.R1; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 23, 2019.

6. Chesapeake Appalachia, L.L.C.; Pad ID: McDonough; ABR–201407009.R1; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 23, 2019.

7. Inflection Energy (PA), LLC; Pad ID: Hamilton Well Site; ABR–201403010.R1; Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 23, 2019.

8. ARD Operating, LLC; Pad ID: COP Tract 653 Pad A; ABR–20090405.R2; Beech Creek Township, Clinton County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2019.

9. ARD Operating, LLC; Pad ID: COP Tract 289 Pad A; ABR–20090410.R2; McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2019.

10. ARD Operating, LLC; Pad ID: Larry's Creek F&G Pad A; ABR–20090411.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2019.

11. ARD Operating, LLC; Pad ID: COP Tract 653 Pad B; ABR–20090414.R2; Beech Creek Township, Clinton County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2019.

12. ARD Operating, LLC; Pad ID: COP Tract 653 Pad C; ABR–20090415.R2; Beech Creek Township, Clinton County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2019.

13. ARD Operating, LLC; Pad ID: Larry's Creek F&G Pad B; ABR–20090416.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2019.

14. Greylock Production, LLC.; Pad ID: Whitetail Gun & Rod Club #1; ABR–20090418.R2; Goshen Township, Clearfield County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 23, 2019.

15. Chesapeake Appalachia, L.L.C.; Pad ID: Gerbino #1; ABR–20140710.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 23, 2019.

16. Chesapeake Appalachia, L.L.C.; Pad ID: Warren #1; ABR–20140711.R2; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 23, 2019.

17. XTO Energy, Inc.; Pad ID: Marquardt; ABR–20090712.R2; Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 23, 2019.

18. XTO Energy, Inc.; Pad ID: Jenzano; ABR–20090713.R2; Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 23, 2019.

19. XTO Energy, Inc.; Pad ID: Temple; ABR–20090714.R2; Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 23, 2019.

20. Seneca Resources Company, LLC; Pad ID: J. Pino Pad G; ABR–20190717.R2; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: Jul7 23, 2019.

21. Seneca Resources Company, LLC; Pad ID: PHC 11V; ABR–20190720.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 0.9999 mgd; Approval Date: July 23, 2019.

22. Seneca Resources Company, LLC; Pad ID: PHC 6H; ABR–20190721.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: July 23, 2019.

23. Seneca Resources Company, LLC; Pad ID: PHC 7H; ABR–20190722.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: July 23, 2019.

24. Seneca Resources Company, LLC; Pad ID: PHC 8H; ABR–20190723.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: July 23, 2019.

25. Chesapeake Appalachia, L.L.C.; Pad ID: Kent; ABR–20090726.R2; Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 23, 2019.

26. Chesapeake Appalachia, L.L.C.; Pad ID: Hershberger; ABR–20090739.R2; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 29, 2019.

27. Chief Oil & Gas, LLC; Pad ID: Dacheux B Drilling Pad; ABR–201407013.R1; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 29, 2019.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: August 20, 2019.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2019–20077 Filed 9–16–19; 8:45 am]

**BILLING CODE 7040–01–P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Actions Taken at September 6, 2019, Meeting

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** As part of its regular business meeting held on September 6, 2019, in Big Flats, New York, the Commission approved the applications of certain water resources projects, and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

**DATES:** September 6, 2019.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission website at *www.srbc.net.*

**SUPPLEMENTARY INFORMATION:** In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Informational presentation of interest to the upper Susquehanna River region; (2) proposed rulemaking on consumptive use regulation; (3) approval of three grant agreements; (4) a report on delegated settlements; (5) an emergency certificate extension (6) Regulatory Program projects; and (7) approval of a settlement with Sunoco Pipeline, L.P.

### Project Applications Approved

The Commission approved the following project applications:

1. *Project Sponsor:* Aqua Pennsylvania, Inc. Project Facility: Eagle Rock Utilities Water System, North Union Township, Schuylkill County, Pa. Application for groundwater withdrawal of up to 0.163 mgd (30-day average) from Well ER–8.

2. *Project Sponsor and Facility:* Chief Oil & Gas LLC (Loyalsock Creek), Forksville Borough, Sullivan County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20150903).

3. *Project Sponsor and Facility:* Dillsburg Area Authority, Carroll Township, York County, Pa. Application for groundwater withdrawal of up to 0.220 mgd (30-day average) from Well 4.

4. *Project Sponsor:* Dover Township. Project Facility: Dover Township Water Department, Dover Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.350 mgd (30-day average) from Well 9 (Docket No. 19880205).

5. *Project Sponsor and Facility:* Duncannon Borough, Penn Township, Perry County, Pa. Application for groundwater withdrawal of up to 0.037 mgd (30-day average) from Well 7.

6. *Project Sponsor and Facility:* Elk Mountain Ski Resort, Inc. (Unnamed Tributary to East Branch Tunkhannock Creek), Herrick Township, Susquehanna County, Pa. Modification to change from peak day to 30-day average for surface water withdrawal and consumptive use limits (Docket No. 20031003).

7. *Project Sponsor and Facility:* Pennsylvania General Energy Company, L.L.C. (Loyalsock Creek), Plunketts Creek Township, Lycoming County, Pa. Application for surface water withdrawal of up to 2.000 mgd (peak day).

8. *Project Sponsor and Facility:* Repsol Oil & Gas USA, LLC (Wappasening Creek), Windham Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.000 mgd (peak day) (Docket No. 20150910).

9. *Project Sponsor and Facility:* Rockdale Marcellus, LLC (Lycoming Creek), McIntyre Township, Lycoming County, Pa. Application for surface water withdrawal of up to 2.000 mgd (peak day).

10. *Project Sponsor and Facility:* Seneca Resources Company, LLC (Marsh Creek), Delmar Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20150908).

11. *Project Sponsor and Facility:* XTO Energy Inc. (West Branch Susquehanna River), Chapman Township, Clinton County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20150911).

### Project Applications Tabled

1. *Project Sponsor and Facility:* Chester Water Authority, East Nottingham Township, Chester County, Pa. Application for an out-of-basin diversion of up to 60.000 mgd (peak day) from the Susquehanna River and Octoraro Reservoir.

2. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of consumptive use of up to 2.622 mgd (peak day) (Docket No. 19890106).

3. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN–33 (Docket No. 19890106).

4. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.678 mgd (30-day average) from Well UN–34 (Docket No. 19890106).

5. *Project Sponsor and Facility:* Pennsylvania State University, College Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 1.728 mgd (30-day average) from Well UN–35 (Docket No. 19890106).

6. *Project Sponsor and Facility:* Chester Water Authority, East Nottingham Township, Chester County, Pa. Application for an out-of-basin diversion of up to 60.000 mgd (peak day) from the Susquehanna River and Octoraro Reservoir.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: September 12, 2019.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2019–20080 Filed 9–16–19; 8:45 am]

**BILLING CODE 7040–01–P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Grandfathering (GF) Registration Notice

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** July 1–31, 2019.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above:

### Grandfathering Registration Under 18 CFR Part 806, Subpart E

1. Borough of Adamstown, GF Certificate No. GF–201907036, Adamstown Borough, Lancaster County, Pa.; Wells 2 and 3; Issue Date: July 10, 2019.

2. New Holland Borough Authority, GF Certificate No. GF–201907037, Earl

Township, Lancaster County, Pa.; Well 1; Issue Date: July 10, 2019.

3. West Manchester Township Authority, GF Certificate No. GF–201907038, West Manchester Township, York County, Pa.; Wells 2, 3, 4, 5, and 6; Issue Date: July 10, 2019.

4. Village of Greene, GF Certificate No. GF–201907039, Village of Greene, Chenango County, N.Y.; Wells 1 and 2; Issue Date: July 29, 2019.

5. Selinsgrove Municipal Authority, GF Certificate No. GF–201907040, Selinsgrove Borough, Snyder County, Pa.; Wells 1 and 2; Issue Date: July 29, 2019.

6. Shrewsbury Borough, GF Certificate No. GF–201907041, Shrewsbury Borough and Shrewsbury Township, York County, Pa.; the Thompson Well and the Lutheran Home Well; Issue Date: July 29, 2019..

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: August 20, 2019.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2019–20078 Filed 9–16–19; 8:45 am]

**BILLING CODE 7040–01–P**

## TENNESSEE VALLEY AUTHORITY

### Integrated Resource Plan

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Issuance of record of decision.

**SUMMARY:** The Tennessee Valley Authority (TVA) has decided to adopt the preferred alternative in its final environmental impact statement (Final EIS) for the Integrated Resource Plan (IRP). The TVA Board of Directors approved the IRP and authorized staff to implement the preferred alternative at its August 22, 2019 meeting. This alternative, identified as the Target Power Supply Mix in the Final EIS, will guide TVA's selection of energy resource options to meet the energy needs of the Tennessee Valley region over the next 20 years. The energy resource options include continued investment in TVA's hydroelectric resources, license renewal for nuclear resources, expansion of solar and natural gas-fired generation, increased energy efficiency, demand response, and energy storage, and decreased coal-fired generation.

**FOR FURTHER INFORMATION CONTACT:** Hunter Hydas, IRP Project Manager, Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402; telephone 423–751–2453, or email *jhhydas@tva.gov.* Matthew Higdon, NEPA Project Lead, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499; telephone 865–632–8051; or email *mshigdon@tva.gov*.

**SUPPLEMENTARY INFORMATION:** This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA).

TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy. TVA operates the nation's largest public power system, providing electricity to nearly 10 million people in an 80,000-square mile area comprised of most of Tennessee and parts of Alabama, Georgia, Kentucky, Mississippi, North Carolina, and Virginia. It provides wholesale power to 154 independent local power companies and 58 directly-served large industries and federal facilities. The TVA Act requires the TVA power system to be self-supporting and operate on a nonprofit basis and directs TVA to sell power at rates as low as feasible.

Dependable generating capability on the TVA power system is approximately 37,500 megawatts (MW). TVA generates most of the power it distributes with 3 nuclear plants, 6 coal-fired plants, 9 natural gas-fired combustion turbine plants, 8 natural gas-fired combined-cycle plants, 29 hydroelectric plants, a pumped-storage hydroelectric plant, a diesel-fired facility, and 14 small solar photovoltaic facilities. TVA has gas-co-firing potential at one coal-fired site as well as biomass co-firing potential at its coal-fired sites. A portion of this delivered power is provided through long-term power purchase agreements. In fiscal year 2018, TVA efficiently delivered 163 billion kilowatt-hours of electricity to customers from a power supply that was 39 percent nuclear, 26 percent natural gas-fired, 21 percent coal-fired, 10 percent hydroelectric, and 3 percent wind and solar. The remaining one percent results from TVA programmatic energy efficiency efforts. TVA transmits electricity from generating facilities over 16,200 circuit miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding its service territory and purchases and sells power on an economic basis almost daily.

TVA completes IRPs to determine the most effective energy resource strategies that will meet demand for electricity in its service area over a 20-year planning period. The recently completed IRP updates TVA's 2015 IRP. Consistent with Section 113 of the Energy Policy Act of 1992, codified within the TVA Act, TVA employs a least-cost system planning process in developing its IRPs. This process takes into account the demand for electricity, energy resource diversity, flexibility, reliability, costs, risks, environmental impacts, and the unique attributes of different energy resources.

#### Future Demand for Energy

TVA uses state-of-the-art energy forecasting models to predict future demands on its system. Because of the uncertainty in predicting future demands, TVA developed high, medium, and low forecasts for both peak load (in MW) and annual net system energy (in gigawatt-hours, GWh) through 2038. Peak load is predicted to change at average annual rates of +0.3 percent in the medium-load forecast (Current Outlook Scenario), −0.7 percent in the low-load forecast, and +1.7 percent in the high-load forecast. Net system energy is predicted to remain flat in the medium-load forecast, decline at an average annual rate of 1.5 percent in the low-load forecast, and grow at an average annual rate of 2.0 percent in the high-load forecast.

Based on these load forecasts, TVA's current firm capacity (TVA generation, energy efficiency and demand response measures, and power purchase agreements), and including planning reserve margins of 17 percent for the summer peak season and 25 percent for the winter peak season, TVA would need additional energy resources in the future. The medium-load case needs are about 2,700 MW of additional capacity and effectively no additional energy by 2028, growing to about 5,600 MW and 1,700 GWh by 2038.

#### Alternatives Considered

Five alternative energy resource strategies were evaluated in the Draft EIS and IRP. These resource planning strategies were identified as potential alternative means of serving future electrical energy demands on the TVA system while meeting least-cost system planning requirements. These alternative strategies were:

*Strategy A—Base Case (No Action Alternative):* This strategy represents the continued implementation of the 2015 IRP, but also reflects subsequent

decisions made by the TVA Board of Directors. This alternative incorporates TVA's current assumptions for resource costs and applies a planning reserve margin constraint, which also applies in every other strategy.

*Strategy B—Promote Distributed Energy Resources (DER):* This strategy is similar to the Base Case, but focuses on increasing the pace of DER adoption by incentivizing distributed solar and storage, combined heat and power, energy efficiency, and demand response.

*Strategy C—Promote Resiliency:* This strategy promotes higher adoption of small, agile capacity to increase the operational flexibility of TVA's power system, while also improving the ability to respond locally to short-term disruptions.

*Strategy D—Promote Efficient Load Shape:* This strategy promotes targeted electrification, demand response, and energy management to optimize load shape, including energy efficiency programs targeting low-income populations.

*Strategy E—Promote Renewables:* This strategy promotes renewables at all scales to meet growing prospective or existing customer demands for renewable energy.

The alternative strategies were analyzed in the context of six scenarios or future ''worlds'' that were determined to be reasonably possible to occur. The scenarios were TVA's Current Outlook, Economic Downturn, Valley Load Growth, Decarbonization, Rapid DER Adoption, and No Nuclear Extensions. Each scenario incorporates a set of uncertainties relevant to power system planning that include plausible future economic, financial, regulatory and legislative conditions, as well as social trends and adoption of technological innovations. Potential 20-year capacity expansion plans or resource portfolios were developed for each combination of alternative strategy and scenario using a capacity planning model. The model built each portfolio from a range of potential energy resource options that included TVA's existing energy resources and new nuclear, coal, natural gas, hydroelectric, wind, solar, and biomass generation, energy storage, energy efficiency, demand response, and electrification as well as facility retirement options. Each portfolio was optimized for the lowest Present Value of Revenue Requirements (PVRR) while meeting energy balance, reserve, operational, and other requirements. The portfolios were then evaluated using an hourly production costing program to determine detailed revenue requirements and near- and long-term system average costs. Recognizing the uncertainty in long-range planning studies, extensive stochastic analyses were also conducted to identify risk exposure within each scenario. Metrics were developed to rank the portfolios and included financial risk, carbon dioxide emissions, water consumption, land use, coal waste generation and changes in regional personal income. These metrics were used to compare the alternative strategies and their associated portfolios.

Strategies A and B had similar scores for most metrics with the exception of total resource cost and environmental impacts. Higher total resource cost and lower environmental impacts for these two strategies is driven by the promotion of distributed resources.

Strategy C had slightly higher PVRR and system average costs than Strategies A and B and had moderate financial risk compared to other strategies. Strategy C had the lowest environmental impact overall, due to the largest amount of coal retirements across scenarios, but had high land use impacts due to the large amount of solar expansion. Flexibility scores were comparable to Strategies D and E.

Strategy D had the highest PVRR and system average cost due to the promotion of storage, was mid-range among the strategies in total resource cost, and had the highest risk exposure across all strategies. Strategy D had low environmental impact overall, but high land use impacts due to large solar expansion. Flexibility scores were comparable to Strategies C and E.

Strategy E had slightly higher PVRR and system average costs than Strategies A and B. Similar to Strategy C, Strategy E had moderate financial risk compared to other strategies. Strategy E had low environmental impact overall, but higher land use impacts due to large solar expansion. Flexibility scores were comparable to Strategies C and D.

These results were released in the Draft IRP and EIS for public review to solicit input and to better inform the development of the preferred alternative. In response to public comments received on the Draft IRP and EIS, TVA conducted additional sensitivity analyses that varied key resource assumptions involving natural gas prices, capital costs, energy efficiency and demand response market depth, integration costs and flexibility benefits, pace and magnitude of solar additions, higher operating costs for coal plants, more stringent carbon constraints, and variation in climate. The results of these analyses supported the energy resource ranges identified in the initial portfolios.

TVA then developed a preferred alternative, the Target Power Supply Mix. In developing it, TVA took into account its least-cost planning requirement and customer priorities of power cost and reliability, as well as comments it received during the public comment on the Draft IRP and EIS. The Target Power Supply Mix establishes ranges of resource additions and retirements by the end of the first 10 years of the study (2028) and by the end year of the study (2038) in megawatts (MW). The recommended ranges are based on all scenarios and sensitivities evaluated, expressed over the 20-year planning period, with more specific direction over the first 10 years. The recommendation also highlights expectations under the Current Outlook Scenario based on TVA's current projections for key drivers such as electricity demand and commodity prices. Shifts in resource additions within the ranges would be based on key input variables, including changing market conditions, more stringent regulations, and technology advancements. The Target Power Supply Mix is described in detail in Section 3.8 of the Final EIS and in Section 9.4 of the Final IRP. Chapter 10 of the Final IRP describes near-term actions that TVA will take to implement the IRP and policy considerations that will guide the implementation of the IRP.

**Public Involvement**

TVA published a notice of intent to prepare the IRP EIS in the **Federal Register** on February 14, 2018 (83 FR 6668). TVA then actively engaged the public through public scoping and public briefings during the development of the IRP and EIS. TVA also established an IRP Working Group to more actively engage stakeholders. Group members included representatives of local power companies (distributors of TVA power), state agencies, direct-served customers, academia, and energy and environmental non-governmental organizations. Members of the group met frequently with TVA IRP staff to review and provide input during the development of the plan. In addition, the Regional Energy Resource Council, a Federal Advisory Committee, provided review and advice periodically throughout the process.

The Notice of Availability (NOA) of the Draft IRP and EIS was published in the **Federal Register** by the U.S. Environmental Protection Agency (USEPA) on February 22, 2019 (84 FR 5760). TVA accepted comments on the Draft IRP and EIS until April 8, 2019. During the comment period, TVA held

seven public meetings and a public webinar to describe the project and accept comments. TVA received about 300 comment submissions signed by about 1,270 individuals and organizations. After considering and responding to these comments, further evaluating the alternative strategies, and developing the Target Power Supply Mix, TVA issued the Final IRP and EIS. The NOA for the Final IRP and EIS was published in the **Federal Register** on July 5, 2019 (84 FR 31268).

Following the publication of the NOA for the Final IRP and EIS, TVA received about 1,000 public comments via a form email through a Sierra Club campaign. These comments reiterated comments received on the Draft IRP and EIS and urged TVA to adopt the greatest amount of DER and renewable energy in the Target Power Supply Mix. Over 400 of these messages included statements added by the commenters. These statements did not raise issues of relevance to this IRP that were not previously raised in the comments on the Draft IRP and EIS and addressed by TVA in Appendix F of the Final EIS.

**Environmentally Preferable Alternative**

All of the alternative strategies, as well as the Target Power Supply Mix, have several common features that affect their anticipated environmental impacts. No baseload generation is added, but there is a need for new capacity in all scenarios to replace expiring or retiring capacity. Solar expansion plays a substantial role in all scenarios, and gas, storage and demand response additions provide reliability and/or flexibility. Emissions of air pollutants, including carbon dioxide, the intensity of carbon dioxide emissions, water use and consumption, and generation of coal waste decrease under all strategies. Although the differences between Strategies A through E are small, the impacts to most environmental resources are greatest for Strategy A (the No Action alternative) and least for Strategy C (Promote Resiliency), followed closely by Strategies B, D and E. The impacts of the Target Power Supply Mix span the range of Strategies A through E for most environmental and socioeconomic resources. An exception is the impact to land use, quantified as the land area needed to accommodate new generating and storage facilities, which is potentially greatest under the Target Power Supply Mix with the addition of up to 14,000 MW of solar capacity occupying up to about 103,000 acres (in a high-load forecast scenario). Under all strategies and the Target Power Supply Mix, at least 97 percent of the land area required for new generating and storage facilities would be occupied by solar facilities. Compared to other types of generation, the impacts of solar facilities to land-based resources are relatively small and of shorter duration as described in Sections 5.2.3 and 5.5.5 of the Final EIS. Given these conditions, Strategy C is the environmentally preferable alternative.

**Decision**

On August 22, 2019, the TVA Board of Directors adopted the preferred alternative, the Target Power Supply Mix. The Board also directed staff to monitor future developments to help determine when deviations from the recommended resource ranges should be made and to initiate an update to the IRP no later than 2024 and earlier if future developments make this appropriate.

**Mitigation Measures**

The reduction of environmental impacts was an important goal in TVA's integrated resource planning process and all of the alternatives assessed by TVA do that. Because this is a programmatic review, measures to reduce potential environmental impacts on a site-specific level were not identified. As TVA deploys specific energy resources, it will review and take measures to reduce their potential environmental impacts as appropriate. TVA's siting process for generation and transmission facilities, as well as processes for modifying these facilities, are designed to avoid and/or minimize potential adverse environmental impacts.

Potential impacts will also be reduced through pollution prevention measures and environmental controls such as air pollution control systems, wastewater treatment systems, and thermal generating plant cooling systems. Other potentially adverse unavoidable impacts will be mitigated by measures such as compensatory wetlands mitigation, payments to in-lieu stream mitigation programs and related conservation initiatives, enhanced management of other properties, documentation and recovery of cultural resources, and infrastructure improvement assistance to local communities.

**Authority:** 40 CFR 1505.2.

Dated: September 9, 2019.

**John M. Thomas III,**

*Executive Vice President and Chief Financial Officer.*

[FR Doc. 2019–20104 Filed 9–16–19; 8:45 am]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2019–0748]**

### Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the collection of information related to rules governing Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations. The information to be collected supports the Department of Transportation's strategic goal of safety. Specifically, the goal is to promote the public health and safety by working toward the elimination of transportation-related deaths and injuries.

**DATES:** Written comments should be submitted by November 18, 2019.

**ADDRESSES:** Please send written comments:

*By Electronic Docket: www.regulations.gov* (Enter docket number into search field).

*By Mail:* Sandra Ray, Federal Aviation Administration, Policy Integration Branch AFS–270, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

*By Fax:* 412–239–3063.

**FOR FURTHER INFORMATION CONTACT:** Thomas Luipersbeck by email at: *Thomas.A.Luipersbeck@faa.gov;* phone: 615–202–9683.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120–0756.

*Title:* Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations.

*Form Numbers:* 2120–0756, Helicopter Air Ambulance Mandatory Flight Information Report.

*Type of Review:* Renewal of an information collection.

*Background:* These requirements in part 135 are addressed specifically to helicopter air ambulances, often referred to as emergency medical services (EMS), and to on-demand operations including overwater operations. The National Transportation Safety Board recommended several changes following accident investigations. The FAA aims to improve the safety record of helicopter air ambulances through better oversight of their operations. The FAA will use the information it collects and reviews to ensure compliance and adherence with regulations and, if necessary, to take enforcement action on violators of the regulations.

Under the authority of Title 49 CFR, Section 44701, Title 14 CFR prescribes the terms, conditions, and limitations as are necessary to ensure safety in air transportation. Title 14 CFR parts 91 and 135 prescribes the requirements governing helicopter air ambulance, commercial helicopter, and Part 91 helicopter operations. The information collected is used to determine air operators' compliance with the minimum safety standards and the applicants' eligibility for air operations certification. Each operator which seeks to obtain, or is in possession of an operating certificate, must comply with the requirements of part 91 or 135, as applicable, which include maintaining data which is used to determine if the air carrier is operating in accordance with minimum safety standards.

*Respondents:* Part 135 Helicopter Air Ambulance Operators, Part 135 Helicopter Commercial Operators, or Part 91 Helicopter Operators.

*Frequency:* On Occasion.

*Estimated Average Burden per Response:* Varies by Response Type.

*Estimated Total Annual Burden:* 132,639 Hours.

Issued in Washington, DC, on September 12, 2019.

**Sandra L. Ray,**

*Aviation Safety Inspector, FAA, Policy Integration Branch, AFS–270.*

[FR Doc. 2019–20072 Filed 9–16–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2018–0028; Notice 1]**

### Mobility Ventures, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Mobility Ventures, LLC (Mobility), a wholly owned subsidiary of AM General, LLC, has determined that certain model year (MY) 2015–2016 Mobility Ventures MV–1 motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems for Light Vehicles.* Mobility filed a noncompliance report dated February 14, 2018. Mobility subsequently petitioned NHTSA on February 20, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Mobility's petition.

**DATES:** The closing date for comments on the petition is October 17, 2019.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

**SUPPLEMENTARY INFORMATION:**

I. *Overview:* Mobility has determined that certain MY 2015–2016 Mobility MV–1 motor vehicles do not fully comply with the requirements of paragraph S5.3.3 of FMVSS No. 126, *Electronic Stability Control Systems for Light Vehicles* (49 CFR 571.126). Mobility filed a noncompliance report dated February 14, 2018, pursuant to CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Mobility subsequently petitioned NHTSA on February 20, 2018, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of their petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of this petition.

II. *Vehicles Involved:* Approximately 977 MY 2015–2016 Mobility Ventures MV–1 vehicles, manufactured between December 22, 2014, and August 24, 2015, are potentially involved.

III. *Noncompliance:* Mobility explains that the previous model year vehicles (2011–2014) were equipped with a 4.6L V8 powertrain with 6 ignition states and the engine was changed in model years (2015–2016) to a 3.7L V6 powertrain with 11 ignition states. Following the change, the supplier of the Electronic Brake Control Module (EBCM) incorrectly programmed the EBCM memory chip to recognize the possible power mode states. This issue led to the telltale warning lamp not illuminating to indicate an Electronic Stability Control (ESC) fault under certain starting conditions, thus, not complying with paragraph S5.3.3 of FMVSS No. 126.

IV. *Rule Requirements:* Paragraph S5.3.3 of FMVSS No. 126, include the requirements relevant to this petition. As of September 1, 2011, except as provided in paragraphs S5.3.4, S5.3.5, S5.3.8, and S5.3.10, the ESC malfunction telltale must illuminate only when a malfunction of the ESC system exists and must remain continuously illuminated under the conditions specified in paragraph S5.3 for as long as the malfunction exists (unless the ''ESC malfunction'' and ''ESC Off'' telltale are combined in a two-part telltale and the ''ESC Off'' telltale is illuminated), whenever the ignition locking system is in the ''On'' (''Run'') position.

V. *Summary of Petition:* Mobility described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Mobility submitted the following reasoning:

1. Mobility submits that this nonconformity is inconsequential to vehicle safety. Mobility believes that this is a *de minimis* noncompliance with paragraph S5.3.3 of FMVSS No. 126 because the Traction Control Off warning lamp will illuminate when a fault is detected, either immediately if the Operator pauses with the key in the ''ignition on'' state before starting the vehicle, or upon driving if the vehicle is started without pausing in the ''ignition on'' state. While the correct telltale warning lamp does not illuminate, Operators are still alerted to the possibility of a malfunction with the ESC system by the illumination of the Traction Control Off warning lamp.

2. Notwithstanding the lack of a safety risk, Mobility and BWI (the EBCM Supplier) are developing a plug-and play re-flashing tool that will permit uploading of revised software into the current EBCM installed in the vehicle. This revised software correctly tracks the ignition sequences required by FMVSS No. 126, and fully corrects the observed noncompliance. Re-flashing is the preferred repair-solution. Currently the only available way to update the EBCM's software is to remove and replace the entire electrical and hydraulic unit with one that has had its software updated. Mobility is preparing to implement this re-flashing solution as required.

3. Mobility has notified its dealers to stop sale of any affected MV–1 vehicles that may be in their dealer inventory (new, used or demonstrator) until the EBCM software is updated. While Mobility does not believe that this technical noncompliance poses a safety risk, Mobility Ventures authorized dealers will perform EBCM unit replacement or re-flashing (when available) free-of-charge when vehicle owners present to Dealers for service.

4. Mobility is not aware of any issues with the performance of the ESC system. As of February 2018, Mobility has not received any warranty claims, field reports, or information about injuries or crashes related to the performance of the ESC.

Mobility concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Mobility's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number listed in the heading of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Mobility no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mobility notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2019–20006 Filed 9–16–19; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for New Special Permits

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

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

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

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC, or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 9, 2019.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| **SPECIAL PERMITS DATA** | | | |
| 20928–N | CATALYTIC INNOVATIONS, LLC. | 172.102(c), 172.200, 172.300, 172.400, 173.159a(c)(2), 173.185(c)(1)(iii), 173.185(c)(1)(iv), 173.185(c)(1)(v), 173.185(c)(3). | To authorizes the manufacture, marking, sale and use of non-DOT specification fiberboard boxes for the transportation in commerce of certain batteries without shipping papers, marking of the proper shipping name and identification number or labeling, when transported for recycling or disposal. (modes 1, 2, 3) |
| 20932–N | Jingjiang Asian-Pacific Logistics Equipment Co., Ltd. | 178.274(b) | To authorize the manufacture, mark, sale, and use of portable tanks constructed to Section VIII, Division 2 of the ASME code. (modes 1, 2, 3) |
| 20935–N | DAICEL SAFETY SYSTEMS AMERICAS, INC. | 172.320, 173.54(a), 173.56(b), 173.57, 173.58, 173.60. | To authorize the transportation in commerce of explosive articles classed as Division 1.4S, when packed in a special shipping container without being approved in accordance with 173.56. (modes, 1, 2, 3, 4) |
| 20936–N | CO2 Exchange LLC | 171.2(k) | To authorize the transportation in commerce of certain DOT 3AL, TC/3ALM and UN ISO 7866 cylinders that contain carbon dioxide, with alternative hazard communication. (mode 1) |
| 20937–N | STAUFF CORPORATION | 173.302a(a)(1) | To authorize the transportation in commerce of non-DOT specification cylinders containing nitrogen. (modes 1, 2) |
| 20939–N | AIRBUS SAFRAN LAUNCHERS. | 172.101(c), 173.166 | To authorize the manufacture, mark, sale, and use of certain fire suppression devices as safety devices. (modes 1, 2, 3, 4, 5) |
| 20940–N | ORBITAL SCIENCES CORPORATION. | 172.101(j), 173.185(a) | To authorize the transportation in commerce of low production lithium ion batteries that exceed the 35 kg by cargo aircraft. (mode 4) |
| 20941–N | AIR SEA CONTAINERS, INC | 173.185(b)(5) | To authorize the transportation in commerce of lithium ion batteries in non-specification packaging. (mode 1) |

[FR Doc. 2019–20043 Filed 9–16–19; 8:45 am]

**BILLING CODE 4909–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Actions on Special Permits

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

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

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

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 9, 2019.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| **SPECIAL PERMITS DATA—Granted** | | | |
| 10501–M. | SEMI–BULK SYSTEMS, INC | 180.352(d) | To modify the special permit to authorize the repair of UN13L2 flexible IBCs with a larger capacity and different cross-sectional shape. |

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 11054–M. | WELKER, INC | 173.301(f)(2), 173.302a(a)(1), 173.304a(a)(1), 173.304a(d)(3)(i), 173.201(c), 173.202(c), 173.203(c), 177.840(a)(1). | To modify the special permit to authorize additional Class 3 and Division 2.2 gases. |
| 12516–M. | POLY–COAT SYSTEMS, INC | 107.503(b), 107.503(c), 173.241, 173.242. | To modify the special permit to remove the request to get authorization from the Approvals and Permits Division before modifying, stretching or re-barreling. |
| 14641–M. | CONOCOPHILLIPS ALASKA, INC. | 172.101(j) | To modify the special permit to authorize an additional hazmat of a type already approved in the permit. |
| 15130–M. | SUNDANCE HELICOPTERS, INC. | 172.101(j)(1), 175.30(a) | To modify the special permit to authorize additional Class 2 hazardous materials. |
| 15552–M. | POLY–COAT SYSTEMS, INC | 107.503(b), 107.503(c), 173.241, 173.242, 173.243. | To modify the special permit to remove the request to get authorization from the Approvals and Permits Division before modifying, stretching or re-barreling. |
| 16172–M. | ENTEGRIS, INC | 173.301(f) | To modify the special permit to authorize an additional hazmat. |
| 16624–M. | FRAMATOME INC | 173.301(a)(1), 173.302(a) | To modify the special permit to authorize non-DOT specification packaging for the safe containment of the compressed helium in certain of its non-Class 7 nuclear fuel component products. |
| 20571–M. | CATALINA CYLINDERS, INC | 173.302a, 178.71(l)(1)(i), 178.71(l)(1)(ii). | To modify the special permit to authorize a 15 year service life from the cylinder's date of manufacture. |
| 20798–N | AMERICASE, LLC | 173.185(a) | To authorize the manufacture, mark, sale, and use of certain 4G and 4B boxes for the transportation in commerce of prototype and low production lithium ion cells and batteries. |
| 20835–N | AKZO NOBEL FUNCTIONAL CHEMICALS LLC. | 178.337–8(a)(3), 178.337–8(a)(4) | To authorize the shipment of UN3394 and UN3399 metal alkyls in MC331 cargo tanks that house product inlet and discharge opening valves in a protective recessed well of the cargo tank. |
| 20851–N | CALL2RECYCLE, INC | 172.200, 172.600, 172.700(a) | To authorize the manufacture, mark, sale, and use of certain UN Standard packagings for transporting end-of-life and/or used lithium ion cells and batteries and lithium ion batteries contained in equipment recycling. |
| 20876–N | SODASTREAM USA INC | 178.71 | To authorize the transportation in commerce of UN pressure vessels that use alternative valve standards than are required by the HMR. |
| 20883–M. | DEPARTMENT OF DEFENSE US ARMY MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND. | 173.302(a), 175.3 | To modify the permit to authorize party status. |
| 20898–N | Rivian Automotive, LLC | 172.101(j), 173.185(a), 173.185(b)(3)(i), 173.185(b)(3)(ii). | To authorize the transportation in commerce of prototype and low production lithium ion batteries and batteries contained in vehicles aboard cargo-only aircraft. |
| 20899–N | CAIRE INC | 171.2(g), 172.203(a), 172.301(c), 173.22(a), 180.211(c)(2). | To authorize the repair of certain DOT 4L cylinders without requiring pressure testing. |
| 20909–N | SMBC RAIL SERVICES LLC | 172.203(a), 172.302(c), 173.247 | To authorize the use of certain DOT 117 tank car tanks for the transportation in commerce of certain elevated temperature materials. |
| 20915–N | ATLAS AIR, INC | 172.101(j), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3). | To authorize the transportation of explosives forbidden for transport by air via cargo-only aircraft. |
| 20922–N | Burgwedel Biotech GmbH | 173.199(b)(5) | To authorize the transportation in commerce of certain biohazard materials in amounts exceeding the amount authorized by the regulations. |
| | | **SPECIAL PERMITS DATA—Denied** | |
| 20857–N | SARTEN | 178.33a–7(a) | To authorize the manufacture, mark, sale, and use of non-DOT specification receptacles meeting the requirements of a DOT 2Q except that the minimum wall thickness is reduced. |
| 20869–N | BALL METALPACK, LLC | 173.304a(d)(3)(ii) | To authorize the manufacture, mark, sale, and use of non-DOT specification inside containers for the transportation of certain Division 2.1 gases. |
| 20882–N | STANLEY BLACK & DECKER, INC. | 173.6(a)(1)(ii), 173.6(d) | To authorize the transportation in commerce of lithium ion batteries as materials of trade when each package has a gross mass exceeding 30 kg and the aggregate weight exceeds 200 kg. |
| | | **SPECIAL PERMITS DATA—Withdrawn** | |

[FR Doc. 2019–20044 Filed 9–16–19; 8:45 am]
**BILLING CODE 4909–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for Modifications to Special Permits

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

**ACTION:** List of applications for modification of special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before October 2, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 10, 2019.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application no | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| **SPECIAL PERMITS DATA** | | | |
| 11900–M | Goldstar Manufacturing L.L.C. | 173.4(a)(1)(iii), 173.4(a)(9), 173.4(a)(10). | To modify the special permit to authorize an additional 6.1 hazmat. (mode 1) |
| 14546–M | Linde Gas North America LLC. | 172.203(a), 180.209(a), 180.209(b), .209(b)(1)(iv). | To modify the special permit to remove the requirement to put the SP number on the shipping papers. (modes 1, 2, 3, 4, 5) |
| 15863–M | Baker Hughes Oilfield Operations LLC. | 173.301(f), 173.302a | To modify the special permit to authorize an additional mode of transportation (passenger aircraft) (modes (1, 2, 3, 4, 5) |
| 15985–M | Space Exploration Technologies Corp. | 172.300, 172.400 | To modify the special permit to increase the allowable state of charge of the batteries. (modes 1, 3) |

[FR Doc. 2019–20047 Filed 9–16–19; 8:45 am]
**BILLING CODE 4909–60–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Action

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is updating the entries of 33 persons on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

#### Notice of OFAC Action(s)

On September 10, 2019, the President determined certain persons previously blocked under Executive Order 12947 of January 23, 1995, ''Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process'' are blocked under section 1(a)(iv) of Executive Order 13224 of September 23, 2001, as amended by the Executive Order of September 10, 2019, ''Modernizing Sanctions to Combat Terrorism''. OFAC is publishing identifying information associated with these 33 persons. The listings for these persons on OFAC's SDN List appear as follows:

#### Individuals

1. ABBAS, Abu (a.k.a. ZAYDAN, Muhammad); DOB 10 Dec 1948; Director of PALESTINE LIBERATION FRONT—ABU ABBAS FACTION (individual) [SDGT].

2. ABDALLAH, Ramadan (a.k.a. ABDULLAH, Dr. Ramadan; a.k.a. SHALLAH, Dr. Ramadan Abdullah; a.k.a. SHALLAH, Ramadan Abdalla Mohamed), Damascus, Syria; DOB 01 Jan 1958; POB Gaza City, Gaza Strip; Passport 265 216 (Egypt); SSN 589–17–6824 (United States); Secretary General of the PALESTINIAN ISLAMIC JIHAD (individual) [SDGT].

3. ABU MARZOOK, Mousa Mohammed (a.k.a. ABU-MARZUQ, Dr. Musa; a.k.a. ABU-MARZUQ, Sa'id; a.k.a. MARZOOK, Mousa Mohamed Abou; a.k.a. MARZOUK, Musa Abu; a.k.a. MARZUK, Musa Abu; a.k.a. ''ABU-'UMAR''); DOB 09 Feb 1951; POB Gaza, Egypt; Passport 92/664 (Egypt); SSN

523–33–8386 (United States); Political Leader in Amman, Jordan and Damascus, Syria for HAMAS (individual) [SDGT].

4. AL RAHMAN, Shaykh Umar Abd; DOB 03 May 1938; POB Egypt; Chief Ideological Figure of ISLAMIC GAMA'AT (individual) [SDGT].

5. AL ZAWAHIRI, Dr. Ayman (a.k.a. AL-ZAWAHIRI, Aiman Muhammad Rabi; a.k.a. AL-ZAWAHIRI, Ayman; a.k.a. SALIM, Ahmad Fuad); DOB 19 Jun 1951; POB Giza, Egypt; Passport 1084010 (Egypt); alt. Passport 19820215; Operational and Military Leader of JIHAD GROUP (individual) [SDGT].

6. AL-MASRI, Abu Hafs (a.k.a. ABDULLAH, Sheikh Taysir; a.k.a. ABU SITTA, Subhi; a.k.a. ATEF, Muhammad; a.k.a. ATIF, Mohamed; a.k.a. ATIF, Muhammad; a.k.a. EL KHABIR, Abu Hafs el Masry; a.k.a. ''ABU HAFS''; a.k.a. ''TAYSIR''); DOB 1951; alt. DOB 1956; alt. DOB 1944; POB Alexandria, Egypt (individual) [SDGT].

7. AL-ZUMAR, Abbud (a.k.a. ZUMAR, Colonel Abbud), Egypt; POB Egypt; Factional Leader of JIHAD GROUP (individual) [SDGT].

8. AWDA, Abd Al Aziz; DOB 1946; Chief Ideological Figure of PALESTINIAN ISLAMIC JIHAD—SHIQAQI (individual) [SDGT].

9. BIN LADIN, Usama bin Muhammad bin Awad (a.k.a. BIN LADEN, Osama; a.k.a. BIN LADEN, Usama; a.k.a. BIN LADIN, Osama; a.k.a. BIN LADIN, Osama bin Muhammad bin Awad; a.k.a. BIN LADIN, Usama); DOB 30 Jul 1957; alt. DOB 1958; POB Jeddah, Saudi Arabia; alt. POB Yemen (individual) [SDGT].

10. FADLALLAH, Shaykh Muhammad Husayn; DOB 1938; alt. DOB 1936; POB Najf Al Ashraf (Najaf), Iraq; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Leading Ideological Figure of HIZBALLAH (individual) [SDGT].

11. HABBASH, George (a.k.a. HABASH, George); Secretary General of POPULAR FRONT FOR THE LIBERATION OF PALESTINE (individual) [SDGT].

12. HAWATMA, Nayif (a.k.a. HAWATMAH, Nayif; a.k.a. HAWATMEH, Nayif; a.k.a. KHALID, Abu); DOB 1933; Secretary General of DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE—HAWATMEH FACTION (individual) [SDGT].

13. ISLAMBOULI, Mohammad Shawqi; DOB 15 Jan 1955; POB Egypt; Passport 304555 (Egypt); Military Leader of ISLAMIC GAMA'AT (individual) [SDGT].

14. JABRIL, Ahmad (a.k.a. JIBRIL, Ahmad); DOB 1938; POB Ramleh, Israel; Secretary General of POPULAR FRONT FOR THE LIBERATION OF PALESTINE—GENERAL COMMAND (individual) [SDGT].

15. MUSA, Rifa'i Ahmad Taha (a.k.a. 'ABD ALLAH, 'Issam 'Ali Muhammad; a.k.a. ABD-AL-WAHAB, Abd-al-Hai Ahmad; a.k.a. AL-KAMEL, Salah 'Ali; a.k.a. TAHA MUSA, Rifa'i Ahmad; a.k.a. THABIT 'IZ; a.k.a. ''ABD-AL-'IZ''; a.k.a. ''ABU YASIR''); DOB 24 Jun 1954; POB Egypt; Passport 83860 (Sudan); alt. Passport 30455 (Egypt); alt. Passport 1046403 (Egypt) (individual) [SDGT].

16. NAJI, Talal Muhammad Rashid; DOB 1930; POB Al Nasiria, Palestine; Principal Deputy of POPULAR FRONT FOR THE LIBERATION OF PALESTINE—GENERAL COMMAND (individual) [SDGT].

17. NASRALLAH, Hasan (a.k.a. NASRALLAH, Hasan Abd-al-Karim), Lebanon; DOB 31 Aug 1960; alt. DOB 31 Aug 1953; alt. DOB 31 Aug 1955; alt. DOB 31 Aug 1958; POB Al Basuriyah, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Passport 042833 (Lebanon); Secretary General of Hizballah (individual) [SDGT] [SYRIA] (Linked To: HIZBALLAH).

18. TUFAYLI, Subhi; DOB 1947; POB Biqa Valley, Lebanon; Former Secretary General and Current Senior Figure of HIZBALLAH (individual) [SDGT].

19. YASSIN, Sheik Ahmed Ismail, Gaza Strip, undetermined; DOB 1938; POB al-Jawrah, al-Majdal District, Gaza (individual) [SDGT].

**Entities**

20. AL QA'IDA (a.k.a. AL QAEDA; a.k.a. AL QAIDA; a.k.a. AL-JIHAD; a.k.a. EGYPTIAN AL-JIHAD; a.k.a. EGYPTIAN ISLAMIC JIHAD; a.k.a. INTERNATIONAL FRONT FOR FIGHTING JEWS AND CRUSADES; a.k.a. ISLAMIC ARMY; a.k.a. ISLAMIC ARMY FOR THE LIBERATION OF HOLY SITES; a.k.a. ISLAMIC SALVATION FOUNDATION; a.k.a. NEW JIHAD; a.k.a. THE BASE; a.k.a. THE GROUP FOR THE PRESERVATION OF THE HOLY SITES; a.k.a. THE ISLAMIC ARMY FOR THE LIBERATION OF THE HOLY PLACES; a.k.a. THE JIHAD GROUP; a.k.a. THE WORLD ISLAMIC FRONT FOR JIHAD AGAINST JEWS AND CRUSADERS; a.k.a. USAMA BIN LADEN NETWORK; a.k.a. USAMA BIN LADEN ORGANIZATION) [FTO] [SDGT].

21. AL-AQSA ISLAMIC BANK (a.k.a. AL-AQSA AL-ISLAMI BANK), P.O. Box 3753, al-Beireh, West Bank; Ramallah II 970, West Bank [SDGT].

22. AL-AQSA MARTYRS BRIGADE (a.k.a. AL-AQSA MARTYRS BATTALION) [FTO] [SDGT].

23. BEIT EL-MAL HOLDINGS (a.k.a. ARAB PALESTINIAN BEIT EL-MAL COMPANY; a.k.a. BEIT AL MAL HOLDINGS; a.k.a. BEIT EL MAL AL-PHALASTINI AL-ARABI AL-MUSHIMA AL-AAMA AL-MAHADUDA LTD.; a.k.a. PALESTINIAN ARAB BEIT EL MAL CORPORATION, LTD.), P.O. Box 662, Ramallah, West Bank [SDGT].

24. DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE—HAWATMEH FACTION (a.k.a. DEMOCRATIC FRONT FOR THE LIBERATION OF PALESTINE; a.k.a. DFLP; a.k.a. RED STAR BATTALIONS; a.k.a. RED STAR FORCES) [SDGT].

25. GAMA'A AL-ISLAMIYYA (a.k.a. AL-GAMA'AT; a.k.a. EGYPTIAN AL-GAMA'AT AL-ISLAMIYYA; a.k.a. ISLAMIC GAMA'AT; a.k.a. ISLAMIC GROUP; a.k.a. ''GI''; a.k.a. ''IG'') [FTO] [SDGT].

26. HAMAS (a.k.a. HARAKAT AL-MUQAWAMA AL-ISLAMIYA; a.k.a. ISLAMIC RESISTANCE MOVEMENT; a.k.a. IZZ AL-DIN AL QASSAM BATTALIONS; a.k.a. IZZ AL-DIN AL QASSAM BRIGADES; a.k.a. IZZ AL-DIN AL QASSAM FORCES; a.k.a. IZZ AL-DIN AL-QASSIM BATTALIONS; a.k.a. IZZ AL-DIN AL-QASSIM BRIGADES; a.k.a. IZZ AL-DIN AL-QASSIM FORCES; a.k.a. STUDENTS OF AYYASH; a.k.a. STUDENTS OF THE ENGINEER; a.k.a. YAHYA AYYASH UNITS) [FTO] [SDGT].

27. HIZBALLAH (a.k.a. ANSAR ALLAH; a.k.a. EXTERNAL SECURITY ORGANIZATION OF HEZBOLLAH; a.k.a. FOLLOWERS OF THE PROPHET MUHAMMED; a.k.a. HIZBALLAH ESO; a.k.a. HIZBALLAH INTERNATIONAL; a.k.a. ISLAMIC JIHAD; a.k.a. ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE; a.k.a. ISLAMIC JIHAD ORGANIZATION; a.k.a. LEBANESE HEZBOLLAH; a.k.a. LEBANESE HIZBALLAH; a.k.a. ORGANIZATION OF RIGHT AGAINST WRONG; a.k.a. ORGANIZATION OF THE OPPRESSED ON EARTH; a.k.a. PARTY OF GOD; a.k.a. REVOLUTIONARY JUSTICE ORGANIZATION; a.k.a. ''ESO''; a.k.a. ''EXTERNAL SECURITY ORGANIZATION''; a.k.a. ''EXTERNAL SERVICES ORGANIZATION''; a.k.a. ''FOREIGN ACTION UNIT''; a.k.a. ''FOREIGN RELATIONS DEPARTMENT''; a.k.a. ''FRD''; a.k.a. ''LH''; a.k.a. ''SPECIAL OPERATIONS BRANCH''); Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations [FTO] [SDGT] [SYRIA].

28. HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT (f.k.a. OCCUPIED LAND FUND), 525 International Parkway, Suite 509, Richardson, TX 75081, United States; P.O. Box 832390, Richardson, TX 75083, United States; 9250 S. Harlem Avenue, Bridgeview, IL, United States; 345 E. Railway Avenue, Paterson, NJ 07503, United States; Hebron, West Bank; Gaza Strip, undetermined; 12798 Rancho Penasquitos Blvd., Suite F, San Diego, CA 92128, United States; Jenin, West Bank; Shurta Street, 'Amira al-Ramuna, 4th Floor, Ramallah, West Bank; US FEIN 95–4227517; and other locations within the United States [SDGT].

29. KAHANE CHAI (a.k.a. AMERICAN FRIENDS OF THE UNITED YESHIVA; a.k.a. AMERICAN FRIENDS OF YESHIVAT RAV MEIR; a.k.a. COMMITTEE FOR THE SAFETY OF THE ROADS; a.k.a. DIKUY BOGDIM; a.k.a. DOV; a.k.a. FOREFRONT OF THE IDEA; a.k.a. FRIENDS OF THE JEWISH IDEA YESHIVA; a.k.a. JEWISH IDEA YESHIVA; a.k.a. JEWISH LEGION; a.k.a. JUDEA POLICE; a.k.a. JUDEAN CONGRESS; a.k.a. KACH; a.k.a. KAHANE; a.k.a. KAHANE LIVES; a.k.a. KAHANE TZADAK; a.k.a. KAHANE.ORG; a.k.a. KAHANETZADAK.COM; a.k.a. KFAR TAPUAH FUND; a.k.a. KOACH; a.k.a. MEIR'S YOUTH; a.k.a. NEW KACH MOVEMENT; a.k.a. NEWKACH.ORG; a.k.a. NO'AR MEIR; a.k.a. REPRESSION OF TRAITORS; a.k.a. STATE OF JUDEA; a.k.a. SWORD OF DAVID; a.k.a. THE COMMITTEE AGAINST RACISM AND DISCRIMINATION; a.k.a. THE HATIKVA JEWISH IDENTITY CENTER; a.k.a. THE INTERNATIONAL KAHANE MOVEMENT; a.k.a. THE JEWISH IDEA YESHIVA; a.k.a. THE JUDEAN LEGION; a.k.a. THE JUDEAN VOICE; a.k.a. THE QOMEMIYUT MOVEMENT; a.k.a. THE RABBI MEIR DAVID KAHANE MEMORIAL

FUND; a.k.a. THE VOICE OF JUDEA; a.k.a. THE WAY OF THE TORAH; a.k.a. THE YESHIVA OF THE JEWISH IDEA; a.k.a. YESHIVAT HARAV MEIR; a.k.a. ''CARD'') [FTO] [SDGT].

30. PALESTINE ISLAMIC JIHAD—SHAQAQI FACTION (a.k.a. ABU GHUNAYM SQUAD OF THE HIZBALLAH BAYT AL–MAQDIS; a.k.a. AL–AWDAH BRIGADES; a.k.a. AL–QUDS BRIGADES; a.k.a. AL–QUDS SQUADS; a.k.a. ISLAMIC JIHAD IN PALESTINE; a.k.a. ISLAMIC JIHAD OF PALESTINE; a.k.a. PALESTINIAN ISLAMIC JIHAD; a.k.a. PIJ; a.k.a. PIJ–SHALLAH FACTION; a.k.a. PIJ–SHAQAQI FACTION; a.k.a. SAYARA AL–QUDS) [FTO] [SDGT].

31. PALESTINE LIBERATION FRONT—ABU ABBAS FACTION (a.k.a. PALESTINE LIBERATION FRONT; a.k.a. PLF; a.k.a. PLF–ABU ABBAS) [FTO] [SDGT].

32. POPULAR FRONT FOR THE LIBERATION OF PALESTINE (a.k.a. HALHUL GANG; a.k.a. HALHUL SQUAD; a.k.a. MARTYR ABU–ALI MUSTAFA BATTALION; a.k.a. PALESTINIAN POPULAR RESISTANCE FORCES; a.k.a. PFLP; a.k.a. PPRF; a.k.a. RED EAGLE GANG; a.k.a. RED EAGLE GROUP; a.k.a. RED EAGLES) [FTO] [SDGT].

33. POPULAR FRONT FOR THE LIBERATION OF PALESTINE—GENERAL COMMAND (a.k.a. PFLP–GC) [FTO] [SDGT].

Dated: September 10, 2019.

**Andrea Gacki,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2019–20002 Filed 9–16–19; 8:45 am]

**BILLING CODE 4810–AL–P**

## TREASURY DEPARTMENT

### Office of Foreign Assets Control

### Special Designation and Blocking Memorandum

Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' as amended by the Executive Order of September 10, 2019, ''Modernizing Sanctions to Combat Terrorism,'' (the Order), section 203 of the International Emergency Economic Powers Act, 50 U.S.C. § 1702, section 5 of the United Nations Participation Act of 1945, 22 U.S.C. § 287c, section 301 of title 3, United States Code, and section 594.802 of the Global Terrorism Sanctions Regulations, 31 CFR part 594 (the Regulations), I hereby determine, in consultation with the Secretary of State, the Attorney General, and the Secretary of Homeland Security, that there is reason to believe the persons identified below and in the attached evidentiary memoranda (SDGT–13629, SDGT–13633, SDGT–16063, SDGT–16220, SDGT–13932, SDGT–16070, SDGT–16542, SDGT–16148, SDGT–12024), meet one or more criteria for designation set forth in section 1 of the Order. Accordingly, except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control (OFAC), (1) all real, personal, and any other property and interests in property of the persons identified below that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in, and (2) any transaction or dealing by a U.S. person or within the United States in property or interests in property of the persons identified below is prohibited. Therefore, the persons identified below will now appear on OFAC's list of Specially Designated Nationals and Blocked Persons.

**Individuals**

1. IBRAHIM, Mohamed Ahmed Elsayed Ahmed, Brazil; DOB 05 Apr 1977; POB Gharbeya, Egypt; citizen Egypt; Gender Male; Passport A09935181 (Egypt); Turkish Identification Number 99148469954 (Turkey) (individual) [SDGT] (Linked To: AL QA'IDA).

2. IZADI, Muhammad Sa'id (a.k.a. IZADI, Mohammad Sa'id; a.k.a. IZADI, Ramazan; a.k.a. IZADI, Saeed; a.k.a. ''ABEDINI, Sa'id''), Iran; Beirut, Lebanon; DOB 1964; Gender Male; Passport 9002446 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE; Linked To: HAMAS).

3. JABARIN, Zaher (a.k.a. JABARIN, Zahar; a.k.a. JABARIN, Zaher Ali Mousa; a.k.a. JABARIN, Zahir; a.k.a. JABBAREEN, Zahir Ali Mousa; a.k.a. JIBRIL, Zaher Ali Mousa), Iran; Turkey; DOB 11 Sep 1968; alt. DOB 09 Nov 1968; POB Salfit, West Bank, Palestinian; alt. POB Nablus, West Bank, Palestinian; Gender Male; Passport 2987250 (Palestinian); alt. Passport 26899900360 (Qatar); Identification Number 904121555 (Palestinian) (individual) [SDGT] (Linked To: HAMAS).

4. AL–RAWI, Marwan Mahdi Salah (a.k.a. ALRAWI, Marwan; a.k.a. AL–RAWI, Marwan Mahdi), Istanbul, Turkey; DOB 1981; POB Ramadi, Iraq; nationality Iraq; Email Address *marwanalrawi2@gmail.com*; Gender Male (individual) [SDGT] (Linked To: REDIN EXCHANGE).

5. TASH, Ismael (a.k.a. MOSLEH, Ismael Salman; a.k.a. TASH, Isma'il), Istanbul, Turkey; DOB 1978; POB Iraq; nationality Iraq; Email Address *ismael.salman@icloud.com*; alt. Email Address *anasiraga9@gmail.com*; alt. Email Address *anasraq1000@mail.ru*; Gender Male (individual) [SDGT] (Linked To: REDIN EXCHANGE).

6. AMEEN, Mohamad (a.k.a. ''Amyne Didi''), Maldives; DOB 22 May 1984; nationality Maldives; Gender Male; National ID No. A114103 (Maldives) (individual) [SDGT] (Linked To: ISIL KHORASAN).

7. AHMAD, Muhammad Ali Sayid (a.k.a. SAEED, Mohammad Ali; a.k.a. ''Abu Turab al-Canadi''), As Susah, Syria; DOB 07 Oct 1990; POB Faisalabad, Punjab Province, Pakistan; nationality Canada; Gender Male (individual) [SDGT].

8. SALVIN, Almaida Marani, Zamboanga City, Philippines; DOB 21 Jun 1989; POB Philippines; nationality Philippines; Gender Female (individual) [SDGT] (Linked To: ISIS–PHILIPPINES).

9. AL–HEBO, Muhamad Ali (a.k.a. AL–HABU, Muhammad; a.k.a. AL–HABU, Muhammad Abd-al-Karim; a.k.a. ALHOBO, Mohamad Abdulkarim; a.k.a. HABO, Muhammed; a.k.a. HABU, Muhammad; a.k.a. HEBBO, Mohammed), Hurriyet Caddesi, Sahinbey, Gaziantep, Turkey; Syria; Lebanon; DOB 01 Oct 1980; alt. DOB 15 Mar 1983; alt. DOB 01 Jan 1980; POB Syria; nationality Syria; Gender Male; Passport 00814L001424 (Syria); National ID No. 2020409266 (Syria); alt. National ID No. 2020316097 (Syria); alt. National ID No. 10716775 (Syria) (individual) [SDGT] (Linked To: AL–HEBO JEWELRY COMPANY).

**Entities**

1. AL HARAM FOREIGN EXCHANGE CO. LTD (a.k.a. AL HARAM COMMERCIAL COMPANY; a.k.a. AL HARAM TRANSFER CO.; a.k.a. AL–HARAM COMPANY FOR MONEY TRANSFER; a.k.a. AL–HARAM EXCHANGE COMPANY; a.k.a. ALHARAM FOR EXCHANGE LTD; a.k.a. AL–HARM TRADING COMPANY; a.k.a. ARABISC HARAM; a.k.a. HARAM TRADING COMPANY; a.k.a. SHARIKAT AL–HARAM LIL–HIWALAT AL–MALIYYAH; a.k.a. TRADING AL–HARM COMPANY), Istanbul, Turkey; Mersin, Turkey; Gaziantep, Turkey; Antakya, Turkey; Reyhanli, Turkey; Iskenderun, Turkey; Belen, Turkey; Surmez, Turkey; Kirikhan, Turkey; Bursa, Turkey; Islahiye, Turkey; Alanya, Turkey; Urfa, Turkey; Antalya, Turkey; Narlica, Turkey; Ankara, Turkey; Izmir, Turkey; Konya, Turkey; Kayseri, Turkey; Turkey; Lebanon; Jordan; Sudan; Palestinian; website *www.arabisc-haram.com* [SDGT] (Linked To:

ISLAMIC STATE OF IRAQ AND THE LEVANT).

2. SAKSOUK COMPANY FOR EXCHANGE AND MONEY TRANSFER (a.k.a. AL–SAKSUK COMPANY; a.k.a. SAKSOUK COMPANY FOR MONETARY TRANSFERS ANTIOCH; a.k.a. SAKSOUK EXCHANGE; a.k.a. SAKSOUK EXCHANGE AND MONEY TRANSFER COMPANY; a.k.a. SAKSOUK EXCHANGE COMPANY; a.k.a. SAKSOUK FINANCIAL EXCHANGE; a.k.a. SAKSUK EXCHANGE AND MONEY TRANSFER COMPANY; a.k.a. SAKSUK MONEY EXCHANGE; a.k.a. SOKOK MONEY TRANSFER COMPANY; a.k.a. THE SAKSUK COMPANY FOR EXCHANGE AND FINANCIAL TRANSFERS), Turkey [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

3. REDIN EXCHANGE (a.k.a. RADIN MONEY EXCHANGE; a.k.a. RAYDAYIN COMPANY; a.k.a. RAYDAYIN TURKEY; a.k.a. REDIN COMPANY; a.k.a. REDIN CONSULTING AND FOREIGN TRADE LIMITED COMPANY; a.k.a. REDIN CURRENCY EXCHANGE; a.k.a. REDIN DIS TICARET LTD. STI; a.k.a. REDIN GENERAL TRADE AND CARGO; a.k.a. REDIN MONEY EXCHANGE; a.k.a. RIDEN MONEY EXCHANGE; a.k.a. RIDIN MONEY EXCHANGE), Balabanaga Mahallesi, Ordu Cd. No: 12, Kat:2, Fatih, Istanbul 34134, Turkey; Molla Gurani Mahallesi, Turgut Ozal Millet Cd. No: 38/34, Fatih, Istanbul 34093, Turkey; Incili Pinar Mahallesi, Nisantasi Sk. No: 13, Cazibe Is Merkezi, Kat: 8D:801, Sehitkamil, Gaziantep 27090, Turkey; No: 12–2 Laleli, Balabanaga Mahallesi, Ordu Caddesi, Fatih, Istanbul, Turkey; Email Address *redin.antep@gmail.com;* alt. Email Address *redin.ist@gmail.com;* Identification Number 3010560025 (Turkey); Registration Number 926549 (Turkey) [SDGT] (Linked To: HAMAS).

4. SMART ITHALAT IHRACAT DIS TICARET LIMITED SIRKETI (a.k.a. SMART IMPORT EXPORT FOREIGN TRADE LIMITED COMPANY), Istanbul, Turkey; Registration Number 85600–5 (Turkey) [SDGT] (Linked To: TASH, Ismael).

5. AL–HEBO JEWELRY COMPANY (a.k.a. AL–HABU HAWALA; a.k.a. AL–HABU JEWELRY; a.k.a. AL–HABU JEWELRY AND MONEY EXCHANGE; a.k.a. AL–HABU MONEY EXCHANGE; a.k.a. ''AL–HEBO''), Gaziantep, Turkey; Raqqah, Syria; Tall Abyad Street, Raqqah, Syria; Sanliurfa, Turkey [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

6. AL–KHALIDI EXCHANGE (a.k.a. AL KHALDI COMPANY LLC; a.k.a. AL KHALDI GOLD AND EXCHANGE COMPANY; a.k.a. ALKHALEDI JEWELRY COMPANY; a.k.a. AL–KHALIDI COMPANY; a.k.a. AL–KHALIDI JEWELRY SHOP; a.k.a. AL–KHALIDI MONEY EXCHANGE; a.k.a. AL–KHALIDI MONEY TRANSFER OFFICE; a.k.a. AL–KHALIDY JEWELRY COMPANY; a.k.a. KHALIDI COMPANY; a.k.a. KHALIDI COMPANY FOR JEWELRY), Cankaya Mahallesi, Silifke Cd. Akdeniz, Mersin 33070, Turkey; 7 Ilkbahar Cd, Bursa, Turkey; Raqqah, Syria; Nishtaman building second floor, New Borsa, Irbil, Iraq; Kapali Carsi, Reisoglu Sk., No: 25–27 Beyazit-Fatih, Istanbul, Turkey; Atikali Mahallesi, Fevzi Pasa Cd. 98–100, Fatih, Istanbul 34087, Turkey; Sanliurfa Market Yildiz Field Maidan, Sanliurfa, Turkey; Yildiz field, Sanliurfa, Turkey; Kapali Carsi, Istanbul, Turkey; Aksaray, Istanbul, Turkey; Zeytoun Bourno, Istanbul, Turkey; Iquitli Mimat Akef Street, Istanbul, Turkey; Oak Square, Istanbul, Turkey; Asnioret, Istanbul, Turkey; Independence, Mersin, Turkey; Sarashieh, Anteb, Turkey; Al-Sharshieh, Bursa, Turkey; Al-Sharsheh, Adana, Turkey; Gaziantep, Turkey; Dayr Az Zawr, Syria; Al Mayadin, Syria; Ismet Inonu Buvari 86, Mersin 33050, Turkey; Halaskar Gazi Caddesi 224, Istanbul 34384, Turkey [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Additionally, except to the extent otherwise provided by law or unless licensed or otherwise authorized by OFAC, the following are prohibited: (1) Any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in the Order or the Regulations; and (2) any conspiracy formed to violate any of the prohibitions in the Order or the Regulations.

The President determined in section 10 of the Order that, because of the ability to transfer funds or other assets instantaneously, prior notice to persons designated pursuant to the Order, who might have a constitutional presence in the United States, of measures to be taken pursuant to the Order would render these measures ineffectual. Therefore, the President determined that there need be no prior notice of such a determination. Accordingly, in making these determinations pursuant to the Order, I also find that no prior notice should be afforded to the persons named above because to do so would provide an opportunity to evade the measures authorized by the Order and, consequently, render those measures ineffectual.

**Andrea Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2019–20003 Filed 9–16–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Relating to Electing Out of Subchapter K for Producers of Natural Gas

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the requirements relating to the election out of subchapter K for producers of natural gas.

**DATES:** Written comments should be received on or before November 18, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title*: Election Out of Subchapter K for Producers of Natural Gas.

*OMB Number:* 1545–1338.

*Regulatory Number:* TD 8578.

*Abstract:* This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under regulation section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements must file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the

two permissible accounting methods described in the regulations.

*Current Actions:* There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 10.

*Estimated Time per Respondent:* 30 mins.

*Estimated Total Annual Burden Hours:* 5.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: September 9, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–20041 Filed 9–16–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Department of Veterans Affairs Voluntary Service National Advisory Committee, Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Executive Committee of the VA Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 17–18, 2019, at Disabled American Veterans Legislative Headquarters, 807 Maine Avenue SW, Washington, DC. The meeting sessions will begin and end as follows:

| Date | Time |
|---|---|
| October 17, 2019 ... | 8:30 a.m. to 4:30 p.m. |
| October 18, 2019 ... | 8:30 a.m. to 12:00 p.m. |

The meeting is open to the public.

The Committee, comprised of 53 major Veteran, civic, and service organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities and strategic partnerships within VA health care facilities, in the community, and on matters related to volunteerism and charitable giving. The Executive Committee consists of 20 representatives from the NAC member organizations.

*On October 17, agenda topics will include:* NAC goals and objectives; review of minutes from the May 1, 2019, Executive Committee meeting; VAVS update on the Voluntary Service program's activities; VHA update, update on strategic partnerships; Parke Board update; evaluations of the 2019 NAC annual meeting; review of membership criteria and process; and plans for 2020 NAC annual meeting (to include workshops and plenary sessions).

*On October 18, agenda topics will include:* Subcommittee reports; review of standard operating procedures; review of fiscal year 2019 organization data; 2021 NAC annual meeting plans; and any new business.

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Mrs. Sabrina C. Clark, Designated Federal Officer, Voluntary Service Office (10B2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or email at *Sabrina.Clark@VA.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Clark at (202) 461–7300.

Dated: September 12, 2019.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2019–20106 Filed 9–16–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee Charter Renewals

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Advisory Committee Charter Renewals

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee ACT (FACA) and after consultation with the General Services Administration, the Secretary of Veterans Affairs renewed the charter for the following statutorily authorized Federal advisory committee for a two-year period, beginning on the date listed below:

| Committee name | Committee description | Charter renewed on |
|---|---|---|
| Veterans and Community Oversight and Engagement Board. | Coordinates locally with VA to identify the goals of the community and Veteran partnership; provides advice and recommendations to improve services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and provides advice and recommendations on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any other successor master plans. | July 3, 2019. |

| Committee name | Committee description | Charter renewed on |
| --- | --- | --- |
| Special Medical Advisory Group. | Provides advice on matters relating to the care and treatment of Veterans and other matters pertinent to the operations of the Veterans Health Administration, such as research, education, training of health manpower, and VA/Department of Defense (DoD) contingency planning. | July 17, 2019. |
| Advisory Committee on Cemeteries and Memorials. | Provides advice on the administration of national cemeteries, Soldiers' lots and plots, the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. | July 30, 2019. |
| Creating Options for Veterans' Expedited Recovery (COVER) Commission. | Provides advice and examines the evidence-based therapy treatment model used by the Secretary of Veterans Affairs for treating mental health conditions of veterans and potential benefits of incorporating complementary and integrative health treatments available in non-Department facilities. | August 13, 2019. |

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW, Washington, DC 20420; telephone (202) 266–4660; or email at *Jeffrey.Moragne@va.gov.* To view a copy of a VA Federal advisory committee charters, please visit *http://www.va.gov/advisory.*

Dated: September 12, 2019.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2019–20090 Filed 9–16–19; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

Vol. 84 Tuesday,

No. 180 September 17, 2019


Part II

## The President

Proclamation 9926—National Farm Safety and Health Week, 2019

Federal Register
Vol. 84, No. 180
Tuesday, September 17, 2019

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9926 of September 13, 2019**

## National Farm Safety and Health Week, 2019

**By the President of the United States of America**

**A Proclamation**

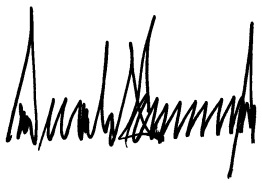
During National Farm Safety and Health Week, we recognize the importance of the health and safety of our Nation's farmers, ranchers, and foresters. These hardworking Americans and their families endure long, strenuous hours of labor to provide for the American people and the world. We recommit to the wellbeing of all agricultural workers by pursuing initiatives that improve their work environments.

From operating dangerous heavy machinery to navigating harsh weather conditions, the men and women who work our country's rich land face significant risks on a daily basis as they labor to bring their products to market. According to the Bureau of Labor Statistics, 581 workers in agriculture and related industries died from a work-related injury in 2017, making agriculture one of the most dangerous jobs in the United States. We must redouble our efforts to ensure the health and safety of our agricultural producers by promoting the best safety practices and adopting innovative technologies that reduce risks. My Administration is committed to providing our Nation's farmers with the tools, training, and resources they need to remain both productive and healthy.

This week, we pledge to strive to improve practices that advance the health and safety of self-employed farm and ranch operators, their family members, and their hired workers. By raising awareness of the inherent risks associated with agricultural work, we can help sustain the success of this critical American industry. As American farmers and American consumers, we will work together to enhance the livelihoods of our farmers, ranchers, and foresters, because we know that when our farmers succeed, our Nation succeeds.

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 September 15 through September 21, 2019, as National Farm Safety and Health Week. I call upon the people of the United States, including America's farmers and ranchers and agriculture-related institutions, organizations, and businesses to reaffirm their dedication to farm safety and health. I also urge all Americans to honor our agricultural heritage and to express their appreciation and gratitude to our farmers, ranchers, and foresters for their important contributions and tireless service to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2019–20246
Filed 9–16–19; 11:15 am]
Billing code 3295–F9–P

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