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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 302

RIN 3064–AF32

Role of Supervisory Guidance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule that codifies the Interagency Statement Clarifying the Role of Supervisory Guidance, issued by the FDIC, Board of Governors of the Federal Reserve System (Board), Office of the Comptroller of the Currency, Treasury (OCC), National Credit Union Administration (NCUA), and Bureau of Consumer Financial Protection (Bureau) (collectively, the agencies) on September 11, 2018 (2018 Statement). By codifying the 2018 Statement, with amendments, the final rule confirms that the FDIC will continue to follow and respect the limits of administrative law in carrying out its supervisory responsibilities. The 2018 Statement reiterated well-established law by stating that, unlike a law or regulation, supervisory guidance does not have the force and effect of law. As such, supervisory guidance does not create binding legal obligations for the public. Because it is incorporated into the final rule, the 2018 Statement, as amended, is binding on the FDIC. The final rule adopts the rule as proposed without substantive changes.

DATES: The final rule is effective on April 1, 2021.

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SUPPLEMENTARY INFORMATION:

I. Background

The FDIC recognizes the important distinction between issuances that serve to implement acts of Congress (known as ''regulations'' or ''legislative rules'') and non-binding supervisory guidance documents.[1] Regulations create binding legal obligations. Supervisory guidance is issued by an agency to ''advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power'' and does not create binding legal obligations.[2]

In recognition of the important distinction between rules and guidance, on September 11, 2018, the agencies issued the Interagency Statement Clarifying the Role of Supervisory Guidance (2018 Statement) to explain the role of supervisory guidance and describe the agencies' approach to supervisory guidance.[3] As noted in the 2018 Statement, the agencies issue various types of supervisory guidance to their respective supervised institutions, including, but not limited to, interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions. Supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding practices for a given subject area. Supervisory guidance often provides examples of practices that mitigate risks, or that the agencies generally consider to be consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers.[4] The agencies noted in the 2018 Statement that supervised institutions at times request supervisory guidance and that guidance is important to provide clarity to these institutions, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.[5]

The 2018 Statement restated existing law and reaffirmed the agencies' understanding that supervisory guidance does not create binding, enforceable legal obligations. The 2018 Statement reaffirmed that the agencies do not issue supervisory criticisms for ''violations'' of supervisory guidance and described the appropriate use of supervisory guidance by the agencies. In the 2018 Statement, the agencies also expressed their intention to (1) limit the use of numerical thresholds in guidance; (2) reduce the issuance of multiple supervisory guidance documents on the same topic; (3) continue efforts to make the role of supervisory guidance clear in communications to examiners and supervised institutions; and (4) encourage supervised institutions to discuss their concerns about

[1] Regulations are commonly referred to as legislative rules because regulations have the ''force and effect of law.'' *Perez* v. *Mortgage Bankers Association,* 575 U.S. 92, 96 (2015) (citations omitted).

[2] *See Chrysler* v. *Brown,* 441 U.S. 281, 302 (1979) (quoting the Attorney General's Manual on the Administrative Procedure Act at 30 n.3 (1947) (Attorney General's Manual) and discussing the distinctions between regulations and general statements of policy, of which supervisory guidance is one form).

[3] *See https://www.fdic.gov/news/financial-institution-letters/2018/fil18049.html.*

[4] While supervisory guidance offers guidance to the public on the FDIC's approach to supervision under statutes and regulations and safe and sound practices, the issuance of guidance is discretionary and is not a prerequisite to the FDIC's exercise of its statutory and regulatory authorities. This point reflects the fact that statutes and legislative rules, not statements of policy, set legal requirements.

[5] The Administrative Conference of the United States (ACUS) has recognized the important role of guidance documents and has stated that guidance can ''make agency decision-making more predictable and uniform and shield regulated parties from unequal treatment, unnecessary costs, and unnecessary risk, while promoting compliance with the law.'' ACUS, Recommendation 2017–5, *Agency Guidance Through Policy Statements* at 2 (adopted December 14, 2017), *available at https://www.acus.gov/recommendation/agency-guidance-through-policy-statements.* ACUS also suggests that ''policy statements are generally better [than legislative rules] for dealing with conditions of uncertainty and often for making agency policy accessible.'' *Id.* ACUS's reference to ''policy statements'' refers to the statutory text of the APA, which provides that notice and comment is not required for ''general statements of policy.'' The phrase ''general statements of policy'' has commonly been viewed by courts, agencies, and administrative law commentators as including a wide range of agency issuances, including guidance documents.

supervisory guidance with their agency contact.

On November 5, 2018, the OCC, Board, FDIC, and Bureau each received a petition for a rulemaking (Petition), as permitted under the Administrative Procedure Act (APA),[6] requesting that the agencies codify the 2018 Statement.[7] The Petition argued that a rule on guidance is necessary to bind future agency leadership and staff to the 2018 Statement's terms. The Petition also suggested there are ambiguities in the 2018 Statement concerning how supervisory guidance is used in connection with matters requiring attention, matters requiring immediate attention (collectively, MRAs), as well as in connection with other supervisory actions that should be clarified through a rulemaking. Finally, the Petition called for the rulemaking to implement changes in the agencies' standards for issuing MRAs. Specifically, the Petition requested that the agencies limit the role of MRAs to addressing circumstances in which there is a violation of a statute, regulation, or order, or demonstrably unsafe or unsound practices.

II. The Proposed Rule and Comments Received

On November 5, 2020, the agencies issued a proposed rule (Proposed Rule or Proposal) that would have codified the 2018 Statement, with clarifying changes, as an appendix to proposed rule text.[8] The Proposed Rule would have superseded the 2018 Statement. The rule text would have provided that an amended version of the 2018 Statement is binding on each respective agency.

Clarification of the 2018 Statement

The Petition expressed support for the 2018 Statement and acknowledged that it addresses many issues of concern for the Petitioners relating to the use of supervisory guidance. The Petition expressed concern, however, that the 2018 Statement's reference to not basing ''criticisms'' on violations of supervisory guidance has led to confusion about whether MRAs are covered by the 2018 Statement. Accordingly, the agencies proposed to clarify in the Proposed Rule that the term ''criticize'' includes the issuance of MRAs and other supervisory criticisms, including those communicated through matters requiring board attention, documents of resolution, and supervisory recommendations (collectively, supervisory criticisms).[9] As such, the agencies reiterated that examiners will not base supervisory criticisms on a ''violation'' of or ''non-compliance'' with supervisory guidance.[10] The agencies noted that, in some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations. The agencies also reiterated that they will not issue an enforcement action on the basis of a ''violation'' of or ''non-compliance'' with supervisory guidance. The Proposed Rule reflected these clarifications.[11]

The Petition requested further that these supervisory criticisms should not include ''generic'' or ''conclusory'' references to safety and soundness. The agencies agreed that supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions. Accordingly, the agencies included language reflecting this practice in the Proposed Rule.

The Petition also suggested that MRAs, as well as memoranda of understanding, examination downgrades, and any other formal examination mandate or sanction, should be based only on a violation of a statute, regulation, or order, including a ''demonstrably unsafe or unsound practice.'' [12] As noted in the Proposed Rule, examiners all take steps to identify deficient practices before they rise to violations of law or regulation or before they constitute unsafe or unsound banking practices. The agencies stated that they continue to believe that early identification of deficient practices serves the interest of the public and of supervised institutions. Early identification protects the safety and soundness of banks, promotes consumer protection, and reduces the costs and risk of deterioration of financial condition from deficient practices resulting in violations of laws or regulations, unsafe or unsound conditions, or unsafe or unsound banking practices. The Proposed Rule also noted that the agencies have different supervisory processes, including for issuing supervisory criticisms. For these reasons, the agencies did not propose revisions to their respective supervisory practices relating to supervisory criticisms.

The agencies also noted that the 2018 Statement was intended to focus on the appropriate use of supervisory guidance in the supervisory process, rather than the standards for supervisory criticisms. To address any confusion concerning the scope of the 2018 Statement, the Proposed Rule removed two sentences from the 2018 Statement concerning grounds for ''citations'' and the handling of deficiencies that do not constitute violations of law.[13]

[6] 5 U.S.C. 553(e).

[7] *See* Petition for Rulemaking on the Role of Supervisory Guidance, *available at https://bpi.com/wp-content/uploads/2018/11/BPI_PFR_on_Role_of_Supervisory_Guidance_Federal_Reserve.pdf.* The Petitioners did not submit a petition to the NCUA, which has no supervisory authority over the financial institutions that are represented by Petitioners. The NCUA chose to join the Proposed Rule on its own initiative.

[8] 85 FR 70512 (November 5, 2020).

[9] The agencies use different terms to refer to supervisory actions that are similar to MRAs and Matters Requiring Immediate Attention (MRIAs), including matters requiring board attention (MRBAs), documents of resolution, and supervisory recommendations.

[10] For the sake of clarification, one source of law among many that can serve as a basis for a supervisory criticism is the *Interagency Guidelines Establishing Standards for Safety and Soundness, see* 12 CFR part 30, appendix A, 12 CFR part. 208, appendix D–1, and 12 CFR part 364, appendix A. These Interagency Guidelines were issued using notice and comment and pursuant to express statutory authority in 12 U.S.C. 1831p–1(d)(1) to adopt safety and soundness standards either by ''regulation or guideline.''

[11] The 2018 Statement contains the following sentence: ''Examiners will not criticize a supervised financial institution for a 'violation' of supervisory guidance.'' 2018 Statement at 2. As revised in the Proposed Rule, this sentence read as follows: ''Examiners will not criticize *(including through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations*) a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a 'violation' of or 'non-compliance' with supervisory guidance.'' Proposed Rule (emphasis added). As discussed *infra* in footnote 13, the Proposed Rule also removed the sentences in the 2018 Statement that referred to ''citation,'' which the Petition suggested had been confusing. These sentences were also removed to clarify that the focus of the Proposed Rule related to the use of guidance, not the standards for MRAs.

[12] The Petition asserted that the federal banking agencies rely on 12 U.S.C. 1818(b)(1) when issuing MRAs based on safety-and-soundness matters. Through statutory examination and reporting authorities, Congress has conferred upon the agencies the authority to exercise visitorial powers with respect to supervised institutions. The Supreme Court has indicated support for a broad reading of the agencies' visitorial powers. *See, e.g., Cuomo* v. *Clearing House Assn L.L.C.,* 557 U.S. 519 (2009); *United States* v. *Gaubert,* 499 U.S. 315 (1991); and *United States* v. *Philadelphia Nat. Bank,* 374 U.S. 321 (1963). The visitorial powers facilitate early identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound banking practice, or breach of fiduciary duty under 12 U.S.C. 1818.

[13] The following sentences from the 2018 Statement were not present in the Proposed Rule: ''Rather, any citations will be for violations of law, regulation, or non-compliance with enforcement orders or other enforceable conditions. During

Comments on the Proposed Rule

A. Overview

The five agencies received approximately 30 unique comments concerning the Proposed Rule.[14] The FDIC discusses below those comments that are potentially relevant to the FDIC.[15] Commenters representing trade associations for banking institutions and other businesses, state bankers' associations, individual financial institutions, and one member of Congress expressed general support for the proposed rule. These commenters supported codification of the 2018 Statement and the reiteration by the agencies that guidance does not have the force of law and cannot give rise to binding, enforceable legal obligations. One of these commenters stated that the Proposal would serve the interests of consumers and competition by clarifying the law for institutions and potentially removing ambiguities that could deter the development of innovative products that serve consumers and business clients, without uncertainty regarding potential regulatory consequences. These commenters expressed strong support as well for the clarification in the Proposed Rule that the agencies will not criticize, including through the issuance of ''matters requiring attention,'' a supervised financial institution for a ''violation'' of, or ''non-compliance'' with, supervisory guidance.

One commenter agreed with the agencies that supervisory criticisms should not be limited to violation of statutes, regulations, or orders, including a ''demonstrable unsafe or unsound practice'' and that supervisory guidance remains a beneficial tool to communicate supervisory expectations to the industry. The commenter stated that the proactive identification of supervisory criticism or deficiencies that do not constitute violations of law facilitates forward-looking supervision, which helps address problems before they warrant a formal enforcement action. The commenter noted as well that supervisory guidance provides important insight to the industry and ensures consistency in the supervisory approach and that supervised institutions frequently request supervisory guidance. The commenter observed that the COVID–19 pandemic has amplified the requests for supervisory guidance and interpretation and that it is apparent institutions want clarity and guidance from regulators.

Two commenters, both public interest advocacy groups, opposed the proposed rule, suggesting that codifying the 2018 Statement may undermine the important role that supervisory guidance can play by informing supervisory criticism, rather than merely clarifying that it will not serve as the basis for enforcement actions. One commenter stated that it is essential for agencies to have the prophylactic authority to base criticisms on imprudent bank practices that may not yet have ripened into violations of law or significant safety and soundness concerns. The commenter stated that this is particularly important with respect to large banks, where delay in addressing concerns could lead to a broader crisis. One commenter stated that the agencies have not explained the benefits that would result from the rule or demonstrated how the rule will promote safety and soundness or consumer protection. The commenter argued that supervision is different from other forms of regulation and requires supervisory discretion, which could be constrained by the rule. One of these commenters argued that the Proposal would send a signal that banking institutions have wider discretion to ignore supervisory guidance.

B. Scope of Rule

Several industry commenters requested that the Proposed Rule cover interpretive rules and clarify that interpretive rules do not have the force and effect of law. One commenter stated that the agencies should clarify whether they believe that interpretive rules can be binding. The commenter argued that, under established legal principles, interpretive rules can be binding on the agency that issues them but not on the public. Some commenters suggested that the agencies follow ACUS recommendations for issuing interpretive rules and that the agencies should clarify when particular guidance documents are (or are not) interpretive rules and allow the public to petition to change an interpretation. A number of commenters requested that the agencies expand the statement to address the standards that apply to MRAs and other supervisory criticisms, a suggestion made in the Petition.

C. Role of Guidance Documents

Several commenters recommended that the agencies clarify that the practices described in supervisory guidance are merely examples of conduct that may be consistent with statutory and regulatory compliance, not expectations that may form the basis for supervisory criticism. One commenter suggested that the agencies state that when agencies offer examples of safe and sound conduct, compliance with consumer protection standards, appropriate risk management practices, or acceptable practices through supervisory guidance or interpretive rules, the agencies will treat adherence to practices outlined in that supervisory guidance or interpretive rule as a safe harbor from supervisory criticism. One commenter also requested that the agencies make clear that guidance that goes through public comment, as well as any examples used in guidance, is not binding. The commenter also requested that the agencies affirm that they will apply statutory factors while processing applications.

One commenter argued that guidance provides valuable information to supervisors about how their discretion should be exercised and therefore plays an important role in supervision. As an example, according to this commenter, 12 U.S.C. 1831p–1 and 12 U.S.C. 1818 recognize the discretionary power conferred on the Federal banking agencies[16] which is separate from the power to issue regulations. The commenter noted that, pursuant to these statutes, regulators may issue cease and desist orders based on reasonable cause to believe that an institution has engaged, is engaging, or is about to engage in an unsafe and unsound practice, separately and apart from whether the institution has technically violated a law or regulation. The commenter added that Congress entrusted the Federal banking agencies with the power to determine whether practices are unsafe and unsound and attempt to halt such practices through supervision, even if a specific case may not constitute a violation of a written law or regulation.

D. Supervisory Criticisms

Several commenters addressed supervisory criticisms and how they relate to guidance. These commenters suggested that supervisory criticisms

examinations and other supervisory activities, examiners may identify unsafe or unsound practices or other deficiencies in risk management, including compliance risk management, or other areas that do not constitute violations of law or regulation.'' 2018 Statement at 2. The agencies did not intend these deletions to indicate a change in supervisory policy.

[14] Of the comments received, some comments were not submitted to all agencies, and some comments were identical. Note that this total excludes comments that were directed at an unrelated rulemaking by the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN). This final rule does not specifically discuss those comments that are only potentially relevant to other agencies.

[15] This final rule does not specifically discuss those comments that are only potentially relevant to other agencies.

[16] The Federal banking agencies are the OCC, Board, and FDIC. 12 U.S.C. 1813.

should be specific as to practices, operations, financial conditions, or other matters that could have a negative effect. These commenters also suggested that MRAs, memoranda of understanding, and any other formal written mandates or sanctions should be based only on a violation of a statute or regulation. Similarly, these commenters argued that there should be no references to guidance in written formal actions and that banking institutions should be reassured that they will not be criticized or cited for a violation of guidance when no law or regulation is cited. One commenter suggested that it would instead be appropriate to discuss supervisory guidance privately, rather than publicly, potentially during the pre-exam meetings or during examination exit meetings. Another commenter suggested that, while referencing guidance in supervisory criticism may be useful at times, agencies should provide safeguards to prevent such references from becoming the de facto basis for supervisory criticisms. One commenter stated that examiners also should not criticize community banks in their final written examination reports for not complying with ''best practices'' unless the criticism involves a violation of bank policy or regulation. The commenter added that industry best practices should be transparent enough and sufficiently known throughout the industry before being cited in an examination report. One commenter requested that examiners should not apply large bank practices to community banks that have a different, less complex and more conservative business model. One commenter asserted that MRAs should not be based on ''reputational risk,'' but rather on the underlying conduct giving rise to concerns and asked the agencies to address this in the final rule.

Commenters that opposed the Proposal did not support restricting supervisory criticism or sanctions to explicit violations of law or regulation. One commenter expressed concern that requiring supervisors to wait for an explicit violation of law before issuing criticism would effectively erase the line between supervision and enforcement. According to the commenter, it would eliminate the space for supervision as an intermediate practice of oversight and cooperative problem-solving between banks and the regulators who support and manage the banking system and would also clearly violate the intent of the law in 12 U.S.C. 1818(b). One commenter emphasized the importance of bank supervisors basing their criticisms on imprudent bank practices that may not yet have ripened into violations of laws or rules but could undermine safety and soundness or pose harm to consumers if left unaddressed.

One commenter argued that the agencies should state clearly that guidance can and will be used by supervisors to inform their assessments of banks' practices; and that it may be cited as, and serve as the basis for, criticisms. According to the commenter, even under the legal principles described in the Proposal, it is permissible for guidance to be used as a set of standards that may inform a criticism, provided that application of the guidance is used for corrective purposes, if not to support an enforcement action.

According to one commenter, the Proposal makes fine conceptual distinctions between, for example, issuing supervisory criticisms ''on the basis of'' guidance and issuing supervisory criticisms that make ''reference'' to supervisory guidance. The commenter suggested that is a distinction that it may be difficult for ''human beings to parse in practice.'' According to the commenter, a rule that makes such a distinction is likely to have a chilling effect on supervisors attempting to implement policy in the field. According to another commenter, the language allowing examiners to reference supervisory guidance to provide examples is too vague and threatens to marginalize the role of guidance and significantly reduce its usefulness in the process of issuing criticisms designed to correct deficient bank practices.

E. Legal Authority and Visitorial Powers

One commenter questioned the Federal banking agencies' reference in the Proposal to visitorial powers as an additional authority for early identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound banking practice, or breach of fiduciary duty under 12 U.S.C. 1818.

F. Issuance and Management of Supervisory Guidance

Several commenters made suggestions about how the agencies should issue and manage supervisory guidance. Some commenters suggested that the agencies should delineate clearly between regulations and supervisory guidance. Commenters encouraged the agencies to regularly review, update, and potentially rescind outstanding guidance. One commenter suggested that the agencies rescind outstanding guidance that functions as rule, but has not gone through notice and comment. One commenter suggested that the agencies memorialize their intent to revisit and potentially rescind existing guidance, as well as limit multiple guidance documents on the same topic. Commenters suggested that supervisory guidance should be easy to find, readily available, online, and in a format that is user-friendly and searchable.

One commenter encouraged the agencies to issue principles-based guidance that avoids the kind of granularity that could be misconstrued as binding expectations. According to this commenter, the agencies can issue separate frequently asked questions with more detailed information, but should clearly identify these as non-binding illustrations. This commenter also encouraged the agencies to publish proposed guidance for comment when circumstances allow. Another commenter requested that the agencies issue all ''rules'' as defined by the APA through the notice-and-comment process.

One commenter expressed concern that the agencies will aim to reduce the issuance of multiple supervisory guidance documents and will thereby reduce the availability of guidance in circumstances where guidance would be valuable.

Responses to Comments

As stated in the Proposed Rule, the 2018 Statement was intended to focus on the appropriate use of supervisory guidance in the supervisory process, rather than the standards for supervisory criticisms. The standards for issuing MRAs or other supervisory actions were, therefore, outside the scope of this rulemaking. For this reason, and for reasons discussed earlier, the final rule does not address the standards for MRAs and other supervisory actions. Similarly, because the FDIC is not addressing its approach to supervisory criticism in the final rule, including any criticism related to reputation risk, the final rule does not address supervisory criticisms relating to ''reputation risk.'' Nonetheless, the FDIC affirms that it does not issue supervisory recommendations, including MRBAs [17] solely based on reputation risk.

[17] The FDIC does not issue MRAs or MRIAs. Rather, the FDIC issues MRBAs, which are a subset of supervisory recommendations. *See Statement of the FDIC Board of Directors on the Development and Communication of Supervisory Recommendations* available at *https://www.fdic.gov/about/governance/recommendations.html.*

With respect to the comments on coverage of interpretive rules, the FDIC agrees with the commenter that interpretive rules do not, alone, ''have the force and effect of law'' and must be rooted in, and derived from, a statute or regulation.[18] While interpretive rules and supervisory guidance are similar in lacking the force and effect of law, interpretive rules and supervisory guidance are distinct under the APA and its jurisprudence and are generally issued for different purposes.[19] Interpretive rules are typically issued by an agency to advise the public of the agency's construction of the statutes and rules that it administers,[20] whereas general statements of policy, such as supervisory guidance, advise the public of how an agency intends to exercise its discretionary powers.[21] To this end, guidance generally reflects an agency's policy views, for example, on safe and sound risk management practices. On the other hand, interpretive rules generally resolve ambiguities regarding requirements imposed by statutes and regulations. Because supervisory guidance and interpretive rules have different characteristics and serve different purposes, the FDIC has decided that the final rule will continue to cover supervisory guidance only.

With respect to the question of whether to adopt ACUS's procedures for allowing the public to request reconsideration or revision of an interpretive rule, this rulemaking, again, does not address interpretive rules. As such, the FDIC is not adding procedures for challenges to interpretive rules through this rulemaking.

In response to the comment that the agencies treat examples in guidance as ''safe harbors'' from supervisory criticism, the FDIC agrees that examples offered in supervisory guidance can provide insight about practices that, in general, may lead to safe and sound operation and compliance with regulations and statutes. The examples in guidance, however, are generalized. When an institution implements examples, examiners must consider the facts and circumstances of that institution in assessing the application of those examples. In addition, the underlying legal principle of supervisory guidance is that it does not create binding legal obligation for either the public or an agency. As such, the FDIC does not deem examples used in supervisory guidance to categorically establish safe harbors from supervisory criticism.

In response to the comments that the Proposal may undermine the important role that supervisory guidance can play in informing supervisory criticism and by serving to address conditions before those conditions lead to enforcement actions, the FDIC agrees that the appropriate use of supervisory guidance generates a more collaborative and constructive regulatory process that supports the safety and soundness and compliance of institutions, thereby diminishing the need for enforcement actions. As noted by ACUS, guidance can make agency decision-making more predictable and uniform and shield regulated parties from unequal treatment, unnecessary costs, and unnecessary risk, while promoting compliance with the law. The FDIC intends, therefore, to continue using guidance as part of the supervisory process. The FDIC does not view the final rule as weakening the role of guidance in the supervisory process and the FDIC will continue to use guidance to support the safety and soundness of banks and promote compliance with consumer protection laws and regulations.

Further, the FDIC does not agree with one commenter's assertion that the Proposal made an unclear distinction between, on the one hand, inappropriate supervisory criticism for a ''violation'' of or ''non-compliance'' with supervisory guidance, and, on the other hand, FDIC examiners' use of supervisory guidance to reference examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations. This approach appropriately implements the principle that institutions are not required to follow supervisory guidance in itself but may find such guidance useful.

With respect to the comment that visitorial powers do not provide the Federal banking agencies with authority to issue MRAs or other supervisory criticisms, the FDIC disagrees. The FDIC's visitorial powers are well-established. The Supreme Court's decision in *Cuomo* v. *Clearing House Assn L.L.C.* explained that the visitation included the ''exercise of supervisory power.'' [22] The Court ruled that the ''power to enforce the law exists separate and apart from the power of visitation.'' [23] While the *Cuomo* decision involved the question of which powers may be exercised by state governments (and ruled that states could exercise law enforcement powers, but could not exercise visitorial powers), the decision did not dispute that the Federal banking agencies possess both these powers. The Court in *Cuomo* explained that visitorial powers entailed ''oversight and supervision,'' while the Court's earlier decision in *Watters* v. *Wachovia Bank, N.A.* explained that visitorial powers entailed ''general supervision and control.'' [24] Accordingly, visitorial powers include the power to issue supervisory criticisms independent of the agencies' authority to enforce applicable laws or ensure safety and soundness. For these reasons, the FDIC reaffirms the statement in the preamble to the Proposed Rule that such visitorial powers have been conferred through statutory examination and reporting authorities, which facilitate the FDIC's identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound practice, or breach of fiduciary duty under 12 U.S.C. 1818. These statutory examination and reporting authorities pre-existed 12 U.S.C. 1818, which neither superseded nor replaced such authorities. The FDIC has been vested with statutory examination and reporting authorities with respect to banks under its supervision.[25]

[18] *See Mortgage Bankers Association,* 575 U.S. at 96.

[19] Questions concerning the legal and supervisory nature of interpretive rules are case-specific and have engendered debate among courts and administrative law commentators. The FDIC takes no position in this rulemaking on those specific debates. *See, e.g.,* R. Levin, *Rulemaking and the Guidance Exemption,* 70 Admin. L. Rev. 263 (2018) (discussing the doctrinal differences concerning the status of interpretive rules under the APA); *see also* Nicholas R. Parillo, *Federal Agency Guidance and the Powder to Bind: An Empirical Study of Agencies and Industries,* 36 Yale J. Reg 165, 168 n.6 (2019) (''[w]hether interpretive rules are supposed to be nonbinding is a question subject to much confusion that is not fully settled''); *see also* ACUS, Recommendation 2019–1, *Agency Guidance Through Interpretive Rules* (Adopted June 13, 2019), *available at https://www.acus.gov/recommendation/agency-guidance-through-interpretive-rules* (noting that courts and commentators have different views on whether interpretive rules bind an agency and effectively bind the public through the deference given to agencies' interpretations of their own rules under *Auer* v. *Robbins,* 519 U.S. 452 (1997)).

[20] *Mortgage Bankers Association,* 575 U.S. at 97 (*citing Shalala* v. *Guernsey Memorial Hospital,* 514 U.S. 87, 99 (1995)); *accord* Attorney General's Manual at 30 n.3.

[21] *See Chrysler* v. *Brown,* 441 U.S. at 302 n.31 (quoting Attorney General's Manual at 30 n.3); *see also, e.g., American Mining Congress* v. *Mine Safety & Health Administration,* 995 F.2d 1106, 1112 (D.C. Cir. 1993) (outlining tests in the D.C. Circuit for assessing whether an agency issuance is an interpretive rule).

[23] *Cuomo* v. *Clearing House Assn L.L.C.,* 557 U.S. 519,536 (2009).

[23] *Id.* at 533.

[24] *Watters* v. *Wachovia Bank, N.A.,* 550 U.S. 1, 127 (2007).

[25] The commenter's reading of the agencies' examination and reporting authorities would assert that the agencies may examine supervised institutions and require reports, but not make findings based on such examinations and reporting,

Continued

In response to comments regarding the role of public comment for supervisory guidance, the FDIC notes that it has made clear through the 2018 Statement and in this final rule that supervisory guidance (including guidance that goes through public comment) does not create binding, enforceable legal obligations. Rather, the FDIC in some instances issues supervisory guidance for comment in order to improve its understanding of an issue, gather information, or seek ways to achieve a supervisory objective most effectively. Similarly, examples that are included in supervisory guidance (including guidance that goes through public comment) are not binding on institutions. Rather, these examples are intended to be illustrative of ways a supervised institution may implement safe and sound practices, appropriate consumer protection, prudent risk management, or other actions in furtherance of compliance with laws or regulations. Relatedly, the FDIC does not agree with one comment that it should use notice-and-comment procedures, without exception, to issue all ''rules'' as defined by the APA, which would include supervisory guidance. Congress has established longstanding exceptions in the APA from the notice and comment process for certain ''rules,'' including for general statements of policy like supervisory guidance and for interpretive rules. As one court has explained, Congress intended to ''accommodate situations where the policies promoted by public participation in rulemaking are outweighed by the countervailing considerations of effectiveness, efficiency, expedition and reduction in expense.'' [26]

With respect to the commenter's request that the agencies affirm that they will apply statutory factors while processing applications, the FDIC affirms that the agency will continue to consider and apply all applicable statutory factors when processing applications.

In response to the question raised by some commenters concerning potential confusion between supervisory guidance and interpretive rules, the FDIC notes that interpretive rules are outside the scope of the rulemaking. In addition, as stated earlier, interpretive rules do not, alone, ''have the force and effect of law'' and must be rooted in, and derived from, a statute or regulation. While interpretive rules and supervisory guidance are similar in lacking the force and effect of law, interpretive rules and supervisory guidance are distinct under the APA and its jurisprudence and are generally issued for different purposes. The FDIC believes that when it issues an interpretive rule, the fact that it is an interpretive rule is generally clear. In addition, these comments relate to clarity in drafting, rather than a matter that seems suitable for rulemaking.

In response to the two commenters opposing the Proposal, this final rule does not undermine any of the FDIC's safety and soundness or other authorities. Indeed, the final rule is designed to support the FDIC's ability to supervise banks effectively. In addition, the FDIC notes the question of the role of guidance has been one of interest to regulated parties and other stakeholders over the past few years. The Petition and the number of comments on the Proposal are a sign of this interest. As such, the FDIC believes it will serve the public interest to reaffirm the appropriate role of supervisory guidance. There are inherent benefits to the supervisory process whenever institutions and examiners have a clear understanding of their roles, including how supervisory guidance can be used effectively within legal limits. Therefore, the FDIC is proceeding with the rule as proposed.

In response to the commenter expressing concern that language in the Statement on reducing multiple supervisory guidance documents on the same topic will limit the FDIC's ability to provide valuable guidance, the FDIC assures the commenter that this language will not inhibit the FDIC from issuing new supervisory guidance when appropriate.

Finally, the FDIC appreciates the other comments related to other aspects of guidance or the supervisory process, but the FDIC does not believe that they are best addressed in this rulemaking.

III. The Final Rule

For the reasons discussed above, the final rule adopts the Proposed Rule without substantive changes. However, the FDIC has decided to issue a final rule that is specifically addressed to the FDIC and FDIC-supervised institutions, rather than the joint version that the five agencies included in their joint Proposal. Although many of the comments were applicable to all of the agencies, some comments were specific to particular agencies or to groups of agencies. Having separate final rules has enabled agencies to better focus on explaining any agency-specific issues to their respective audiences of supervised institutions and agency employees.

IV. Administrative Law Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [27] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has reviewed this final rule and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the final rule on small entities.[28] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[29] The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[30] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

As of September 30, 2020, the FDIC supervised 3,245 institutions, of which

unless the finding is sufficient to warrant a formal enforcement action under the standard set out in 12 U.S.C. 1818. This reading is inconsistent with the history of federal banking supervision, including as described in the cases cited in the Proposed Rule.

[26] *Am. Hosp. Ass'n* v. *Bowen,* 834 F.2d 1037, 1045 (D.C. Cir. 1987). The specific contours of these exceptions are the subject of an extensive body of case law.

[27] 44 U.S.C. 3501–3521.

[28] 5 U.S.C. 601 *et seq.*

[29] 5 U.S.C. 605(b).

[30] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

2,434 were considered small for purposes of RFA.[31] This final rule does not impose any obligations on FDIC-supervised entities, and FDIC-supervised entities do not need to take any action in response to this rule. For these reasons, and under section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[32] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language in the Proposed Rule.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[33] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[34] The FDIC has determined that the final rule will not impose additional reporting, disclosure, or other requirements on IDIs; therefore, the requirements of the RCDRIA do not apply.

E. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[35] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[36]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) 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.[37] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 302

Administrative practice and procedure, Banks, banking.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the preamble, the FDIC adds part 302 to 12 CFR chapter III, subchapter A, to read as follows:

PART 302—USE OF SUPERVISORY GUIDANCE

Sec.

Authority: 5 U.S.C. 552; 12 U.S.C. 1818, 1819(a) (Seventh and Tenth), 1831p–1.

§ 302.1 Purpose.

The FDIC issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and guidance, as stated in the Statement Clarifying the Role of Supervisory Guidance (appendix A to this part) (Statement).

§ 302.2 Implementation of the Statement Clarifying the Role of Supervisory Guidance.

The Statement describes the official policy of the FDIC with respect to the use of supervisory guidance in the supervisory process. The Statement is binding on the FDIC.

§ 302.3 Rule of construction.

This subpart does not alter the legal status of guidelines authorized by statute, including but not limited to, 12 U.S.C. 1831p–1, to create binding legal obligations.

Appendix A to Part 302—Statement Clarifying the Role of Supervisory Guidance

Statement Clarifying the Role of Supervisory Guidance

The FDIC is issuing this statement to explain the role of supervisory guidance and to describe the FDIC's approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

The FDIC issues various types of supervisory guidance, including interagency statements, advisories, policy statements, questions and answers, and frequently asked questions, to its supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the FDIC does not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the FDIC's supervisory expectations or priorities and articulates the FDIC's general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the FDIC generally considers consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Efforts To Clarify the Role of Supervisory Guidance

The FDIC is clarifying the following policies and practices related to supervisory guidance:

• The FDIC intends to limit the use of numerical thresholds or other ''bright-lines'' in describing expectations in supervisory guidance. Where numerical thresholds are used, the FDIC intends to clarify that the

[31] FDIC Consolidated Reports of Condition and Income Data, September 30, 2020.

[32] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[33] 12 U.S.C. 4802(a).

[34] 12 U.S.C. 4802.

[35] 5 U.S.C. 801 *et seq.*

[36] 5 U.S.C. 801(a)(3).

[37] 5 U.S.C. 804(2).

[1] Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

thresholds are exemplary only and not suggestive of requirements. The FDIC will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.

• Examiners will not criticize through supervisory recommendations (including matters requiring board attention) a supervised financial institution for, and the FDIC will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

• Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.

• The FDIC also has at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the FDIC to improve its understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

• The FDIC will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

The FDIC will continue efforts to make the role of supervisory guidance clear in communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on January 19, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–01537 Filed 3–1–21; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0905; Project Identifier 2019–SW–102–AD; Amendment 39–21384; AD 2021–02–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2015–26–01, which applied to certain Airbus Helicopters Model AS332C1, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters with an energy-absorbing seat. AD 2015–26–01 required inspecting for the presence of labels (placards) that prohibit stowing anything under the seat, and if a label (placard) is missing or not clearly visible to each occupant, installing a label (placard). This AD retains all of the requirements of AD 2015–26–01, and also adds helicopters to the applicability and requires a modification (installing new labels (placards)). This AD was prompted by the determination that additional helicopters are affected by the unsafe condition, and that new labels (placards) are required for all affected helicopters. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 6, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 6, 2021.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 26, 2016 (80 FR 79466, December 22, 2015).

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; phone: 972–641–0000 or 800–232–0323; fax: 972–641–3775; or at *https://www.airbus.com/helicopters/services/support.html.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0905.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0905; 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, 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: Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3218; email: *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2015–26–01, Amendment 39–18349 (80 FR 79466, December 22, 2015) (AD 2015–26–01). AD 2015–26–01 applied to certain Airbus Helicopters Model AS332C1, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters with an energy-absorbing seat. The NPRM published in the **Federal Register** on October 7, 2020 (85 FR 63240). The NPRM was prompted by the discovery that required labels (placards) prohibiting stowage of any object under an energy-absorbing seat had not been systematically installed and the determination that additional helicopters are affected by the unsafe condition, and that new labels (placards) are required for all affected helicopters. The NPRM proposed to continue to require inspecting for the presence of labels (placards) that prohibit stowing anything under the seat, and if a label (placard) is missing or not clearly visible to each occupant, installing a label (placard), and also proposed to add helicopters to the applicability and require a modification (installing new labels (placards)). The FAA is issuing this AD to address any object stowed under an energy-absorbing seat, which could reduce the efficiency of the energy-absorbing function of the seat,

resulting in injury to the seat occupants during an accident. See the MCAI for additional background information.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0088R1, dated November 8, 2019 (EASA AD 2019–0088R1) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B and EC155B1 helicopters with an energy-absorbing seat. EASA advised that during certification of an energy-absorbing seat with a new part number, the labels (placards) that require keeping the space under the seat free of any object were not systematically installed. EASA stated that this condition, if not corrected, could prompt occupants to stow objects under an energy-absorbing seat, which would reduce the effectiveness of the seat and the occupants' chance of surviving an accident. EASA consequently issued AD 2014–0204, dated September 11, 2014; corrected September 12, 2014 (which corresponds to FAA AD 2015–26–01) to require a one-time inspection for the presence of labels (placards) and, if they were missing or unreadable, making and installing labels (placards) prohibiting the placing of an object under an energy absorbing seat. EASA later advised, in EASA AD 2017–0226, dated November 17, 2017 (EASA AD 2017–0226), which superseded EASA AD 2014–0204, that additional new labels (placards) were required and that additional helicopters were affected by the unsafe condition. In this MCAI, which supersedes EASA AD 2017–0226, EASA advised that additional extended compliance times were necessary for certain helicopters.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0905.

Comments

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

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued the following service information. This service information describes procedures for installing new labels (placards) prohibiting stowage of any object under an energy-absorbing seat. These documents are distinct since they apply to different helicopter models.

- Airbus Helicopters Alert Service Bulletin No. AS332–25.03.16, Revision 0, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS332–25.03.41, Revision 0, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS332–25.03.42, Revision 0, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS365–25.01.67, Revision 0, dated February 12, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC155–25A144, Revision 0, dated February 12, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 1, dated November 6, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC225–25A203, Revision 0, dated September 7, 2017.

Airbus Helicopters has also issued the following service information. This service information describes procedures for inspecting for labels, placards, or markings that prohibit stowing anything under certain seats and installing a placard. These documents are distinct since they apply to different helicopter models.

- Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017.
- Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66, Revision 1, dated February 12, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC155–04A013, Revision 1, dated February 12, 2019.
- Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019.

This AD also requires the following service information, which the Director of the Federal Register approved for incorporation by reference as of January 26, 2016 (80 FR 79466, December 22, 2015).

- Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 0, dated August 26, 2014.
- Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66, Revision 0, dated August 26, 2014.
- Airbus Helicopters Alert Service Bulletin No. EC155–04A013, Revision 0, dated August 26, 2014.
- Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 0, dated August 26, 2014.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Airbus Helicopters issued Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 1, dated September 7, 2017, which describes procedures for inspecting for labels, placards, or markings that prohibit stowing anything under certain seats and installing a placard.

Airbus Helicopters has also issued Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 0, dated September 7, 2017, which describes procedures for installing new labels (placards) prohibiting stowage of any object under an energy-absorbing seat.

Costs of Compliance

The FAA estimates that this AD affects 90 helicopters 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
Inspection (52 Helicopters) (Retained actions from AD 2015–26–01).	1 work-hour × $85 per hour = $85	$0	$85	$4,420
Install label (placard) (52 Helicopters) (Retained actions from AD 2015–26–01).	2 work-hours × $85 per hour = $170	Minimal	170	8,840
Inspection (38 Helicopters) (New actions)	1 work-hour × $85 per hour = $85	0	85	3,230

ESTIMATED COSTS FOR REQUIRED ACTIONS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install label (placard) (38 Helicopters) (New actions).	2 work-hours × $85 per hour = $170	Minimal	170	6,460
Install new label (placard) (New actions)	2 work-hours × $85 per hour = $170	Minimal	170	15,300

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.

Regulatory Findings

The FAA 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) 2015–26–01, Amendment 39–18349 (80 FR 79466, December 22, 2015), and adding the following new AD:

2021–02–01 Airbus Helicopters: Amendment 39–21384; Docket No. FAA–2020–0905; Project Identifier 2019–SW–102–AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 6, 2021.

(b) Affected ADs

This AD replaces AD 2015–26–01, Amendment 39–18349 (80 FR 79466, December 22, 2015) (AD 2015–26–01).

(c) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, EC225LP, AS–365N2, AS 365 N3, EC 155B and EC155B1 helicopters, certificated in any category, equipped with at least one energy-absorbing seat listed in figure 1 to paragraph (c) of this AD, except any helicopter embodying the applicable Airbus Helicopters modifications on all applicable seat positions listed in figure 2 to paragraph (c) of this AD.

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Figure 1 to paragraph (c) – *Affected Seats*

Seat Manufacturer	Seat Type	Generic P/N*
Fischer + Entwicklungen	H110	9606-( )-( )-( )
	H140	0520-( )-( )-( )
	H160	0718-( )-( )-( )-( )
	185/410	9507-( )-( )-( )
	236/406	9608-( )-( )-( )
SICMA Aero Seat or Zodiac Seats France	Sicma 192	192xx-xx-xx
	Sicma 159	1591718-xx 159110
Socea Sogerma	ST102	2510102-xx-xx
	ST107	2510107-xx-xx
	ST120	2520120-xx
* "xx" can be any two alphanumeric characters and "( )" can be any number of alphanumeric characters.		

Figure 2 to paragraph (c) – *Modifications (Installation of Label (Placard) Prohibiting Storage under the Seat)*

Helicopter Type	Modification	Seat (position)
AS332C, AS332C1, AS332L, AS332L1, AS332L2	0728251 or 332P084159	Cabin
	0728352 or 332P084160	Cockpit
	0728403 or 332P084161	3rd Crew Member
EC225LP	0728251, or 332P084159, or 332P085421.00, or 332P085421.01, or 332P085421.02 or 332P085421.03	Cabin
	0728352 or 332P084160	Cockpit
AS-365N2, AS 365 N3, EC 155B, EC155B1	365V874113.00	All seat configurations

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(d) Subject

Air Transport Association (ATA) of America Code 11, Placards and markings.

(e) Reason

This AD was prompted by the discovery that required labels (placards) prohibiting stowage of any object under an energy-absorbing seat had not been systematically installed. The FAA is issuing this AD to address any object stowed under an energy-absorbing seat which could reduce the efficiency of the energy-absorbing function of

the seat, resulting in injury to the seat occupants during an accident.

(f) Compliance

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

(g) Retained Inspection and Corrective Actions With Revised Service Information

This paragraph restates the requirements of paragraph (e) of AD 2015–26–01, with revised service information. Within 110 hours time in service after January 26, 2016 (the effective date of AD 2015–26–01), do the actions specified in paragraph (g)(1) or (2) of this AD, as applicable for your model helicopter.

(1) For Model AS332C1, AS332L1, AS332L2, and EC225LP helicopters:

(i) Inspect the cabin and cockpit for labels, placards, or markings that prohibit stowing anything under the seats in the locations shown in the figure in the Appendix of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85 or No. EC225–04A012, both Revision 0, dated August 26, 2014; or Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017, or Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019; as applicable for your model helicopter.

(ii) If a label, placard, or marking is not located in every location depicted in the figure in the Appendix of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85 or No. EC225–04A012, both Revision 0, dated August 26, 2014; or Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017, or Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019 or is not visible and legible to every occupant, before further flight, install a placard in accordance with the Accomplishment Instructions, paragraph 3.B., of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85 or No. EC225–04A012, both Revision 0, dated August 26, 2014; or Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017, or Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019; as applicable for your model helicopter.

(2) For Model AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters:

(i) Inspect each seat leg in the cabin and cockpit for labels, placards, or markings that prohibit stowing anything under the seats.

(ii) If a label, placard, or marking does not exist on one leg of each seat or is not visible and legible, before further flight, install a placard in accordance with the Accomplishment Instructions, paragraph 3.B., and the Appendix of Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66 or No. EC155–04A013, both Revision 0, dated August 26, 2014; or Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66 or No. EC155–04A013, both Revision 1, dated February 12, 2019; as applicable for your model helicopter.

(h) New Inspection and Corrective Actions for Certain Helicopters

(1) For Model AS332C and AS332L helicopters: Within 110 hours time in service or 30 days, whichever occurs first, after the effective date of this AD, inspect the cabin and cockpit for labels, placards, or markings that prohibit stowing anything under the seats in the locations shown in the figure in the Appendix of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017.

(2) If a label, placard, or marking is not located in every location depicted in the figure in the Appendix of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017 or is not visible and legible to every occupant, before further flight, install a placard in accordance with the Accomplishment Instructions, paragraph 3.B., of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017.

(i) New Requirements of This AD: Modification (Install New Placards)

(1) At the applicable times specified in paragraph (i)(2) of this AD, install new placards prohibiting stowage of any object under an energy-absorbing seat in accordance with the Accomplishment Instructions, paragraph 3.B., of the applicable service information specified in paragraphs (i)(1)(i) through (vii) of this AD, except you are not required to discard the old labels (placards). Doing the installation required by this paragraph terminates the requirements of paragraphs (g) and (h) of this AD.

(i) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.16, Revision 0, dated September 7, 2017.

(ii) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.41, Revision 0, dated September 7, 2017.

(iii) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.42, Revision 0, dated September 7, 2017.

(iv) Airbus Helicopters Alert Service Bulletin No. AS365–25.01.67, Revision 0, dated February 12, 2019.

(v) Airbus Helicopters Alert Service Bulletin No. EC155–25A144, Revision 0, dated February 12, 2019.

(vi) Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 1, dated November 6, 2019.

(vii) Airbus Helicopters Alert Service Bulletin No. EC225–25A203, Revision 0, dated September 7, 2017; as applicable for your model helicopter.

(2) At the applicable times specified in paragraph (i)(2)(i) or (ii) of this AD, do the installation required by paragraph (i)(1) of this AD.

(i) For Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, AS–365N2, AS 365 N3, EC 155B, EC155B1, and EC225LP helicopters, all manufacturer serial numbers, except Model EC225LP helicopters, manufacturer serial numbers 2663, 2670, 2854, 2883, 2885, 2901 and 2921: Within 110 hours time in service or 6 months, whichever occurs first after the effective date of this AD.

(ii) For Model EC225LP helicopters, manufacturer serial numbers 2663, 2670, 2854, 2883, 2885, 2901 and 2921: Within 50 hours time in service or 2 months, whichever occurs first after the effective date of this AD.

(j) No Actions Required for Certain Helicopters

For Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters delivered after September 7, 2017: No actions are required, provided that no energy-absorbing seat, as identified in figure 1 to paragraph (c) of this AD, has been installed on that helicopter since delivery.

(k) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 1, dated September 7, 2017.

(2) This paragraph provides credit for the actions specified in paragraphs (i)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 0, dated September 7, 2017.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation 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 Validation Branch, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@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) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(m) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2019–0088R1, dated November 8, 2019. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0905.

(2) For more information about this AD, contact Kathleen Arrigotti, Aviation Safety Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3218; email: *kathleen.arrigotti@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(5) and (6) of this AD.

(n) 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.

(3) The following service information was approved for IBR on April 5, 2021.

(i) Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 1, dated September 7, 2017.

(ii) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.16, Revision 0, dated September 7, 2017.

(iii) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.41, Revision 0, dated September 7, 2017.

(iv) Airbus Helicopters Alert Service Bulletin No. AS332–25.03.42, Revision 0, dated September 7, 2017.

(v) Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66, Revision 1, dated February 12, 2019.

(vi) Airbus Helicopters Alert Service Bulletin No. AS365–25.01.67, Revision 0, dated February 12, 2019.

(vii) Airbus Helicopters Alert Service Bulletin No. EC155–04A013, Revision 1, dated February 12, 2019.

(viii) Airbus Helicopters Alert Service Bulletin No. EC155–25A144, Revision 0, dated February 12, 2019.

(ix) Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 2, dated November 6, 2019.

(x) Airbus Helicopters Alert Service Bulletin No. EC225–25A179, Revision 1, dated November 6, 2019.

(xi) Airbus Helicopters Alert Service Bulletin No. EC225–25A203, Revision 0, dated September 7, 2017.

(4) The following service information was approved for IBR on January 26, 2016 (80 FR 79466, December 22, 2015).

(i) Airbus Helicopters Alert Service Bulletin No. AS332–01.00.85, Revision 0, dated August 26, 2014.

(ii) Airbus Helicopters Alert Service Bulletin No. AS365–01.00.66, Revision 0, dated August 26, 2014.

(iii) Airbus Helicopters Alert Service Bulletin No. EC155–04A013, Revision 0, dated August 26, 2014.

(iv) Airbus Helicopters Alert Service Bulletin No. EC225–04A012, Revision 0, dated August 26, 2014.

(5) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; phone: 972–641–0000 or 800–232–0323; fax: 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(6) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

(7) 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on January 4, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–03688 Filed 3–1–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 317

[RIN 3084–AB57]

Prohibition of Energy Market Manipulation Rule Review

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission (''Commission'') has completed its regulatory review of its Prohibition of Energy Market Manipulation Rule implementing Section 811 of Subtitle B of Title VIII of the Energy Independence and Security Act of 2007. This regulatory review is part of the Commission's periodic review of all its regulations and guides. The Commission has determined to retain the Rule in its present form.

DATES: This action is effective March 2, 2021.

ADDRESSES: Relevant portions of the record of this proceeding, including this document, are available at *https://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Richman (202–326–2563), Assistant Director, Mergers III, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission reviews its rules and guides periodically to seek information about their benefits and costs, as well as their regulatory and economic impact. This information assists the Commission in identifying rules and guides that warrant modification or rescission.

Pursuant to this process, on June 5, 2020, the Commission initiated a regulatory rule review by publishing a document in the **Federal Register** requesting public comment (''Request'') on the Prohibition of Energy Market Manipulation Rule (''Rule'').[1] The Commission sought comment on standard regulatory review questions such as whether the Rule continues to serve a useful purpose; the costs and benefits of the Rule for consumers and businesses; and what effects, if any, technological or economic changes have had on the Rule. In addition to generally requesting comments recommending modifications to the Rule, the Commission also invited comment regarding two specific issues. First, the Commission requested comment identifying any evidence § 317.3 of the Rule does not reach behavior that falls within the scope of acts prohibited by its authorizing statute, 42 U.S.C. 17301, and violates the antitrust or consumer protection laws. Second, the Commission invited comment with respect to the definition of ''knowingly'' in § 317.2(c) of the Rule, its possible limitations, and the appropriateness of a modification of the definition to capture acts, practices, or courses of business a person ''knew or *should* have known'' were fraudulent or deceptive.

After considering the comments and evidence, the Commission has determined to retain the Rule without modification.

II. Background

The Rule, authorized by the Energy Independence and Security Act of 2007 (''EISA''),[2] prohibits market manipulation in connection with the purchase or sale of crude oil or petroleum products. The Rule prohibits fraudulent or deceptive conduct (including making false or misleading statements of material fact) in connection with wholesale purchases or sales of crude oil, gasoline, or petroleum distillates. The Rule separately bans the intentional failure to state a material fact when the omission (1) makes the statement misleading and (2) distorts or is likely to distort market conditions for any product covered by the Rule. The Commission issued the Rule on August 6, 2009, with an effective date of November 4, 2009.

III. Regulatory Review Comment and Analysis

The Commission received one substantive comment, submitted by Eversheds Sutherland (US) LLP (''ESUS''). ESUS recommends the Commission rescind the Rule. The comment addresses whether there is a continuing need for the Rule and its benefits and costs, but not any of the other questions in the Request. This rule review summarizes the comment and

[1] *Federal Trade Commission: Rule Review; Request for Public Comment,* 85 FR 34548 (June 5, 2020).

[2] 42 U.S.C. 17301–17305.

explains the Commission's decision to retain the Rule in its current form.

ESUS recommends the Commission rescind the Rule partly because the Commodity Futures Trading Commission (''CFTC'') has the legal authority and the ability to regulate market manipulation of wholesale petroleum markets.[3] This overlap in regulatory authority is by design.[4] It is intended to facilitate cooperation and ensure comprehensive enforcement that enhances regulatory certainty for businesses and consumers, a point the CFTC made in 2011 in response to a similar comment during the CFTC's rulemaking process.[5] The Commission stated its intent to cooperate with other agencies, including the CFTC, when adopting the Rule in 2009,[6] and memorialized that commitment in a 2011 Memorandum of Understanding with the CFTC. Under the Memorandum of Understanding, the Commission and the CFTC continue to cooperate on ''issues of common regulatory interest, particularly as such interest relates to market manipulation, [to] foster fair competition and promote the integrity of the markets, including petroleum markets.'' [7]

ESUS also asserts that rescinding the Rule eliminates the risk market participants will incur penalties from both the Commission and the CFTC for the same act of market manipulation.[8] This risk has never materialized.

ESUS also asserts the Rule imposes compliance costs on market participants and diverts Commission resources away from enforcement of consumer protection and antitrust laws.[9] With respect to compliance costs on market participants, the Commission notes the Rule does not require any affirmative compliance efforts such as recordkeeping or disclosure of information; rather, the Rule requires only that market participants refrain from fraudulent and deceptive statements or behavior.[10] As ESUS points out, the CFTC's broader authority to regulate market manipulation includes prohibiting the conduct the Commission's Rule prohibits.[11] Maintaining compliance programs to avoid violating these substantially similar requirements does not lead to additive compliance costs. As a result, and given the absence of any additional substantiation of compliance costs associated with the Rule, the Commission concludes the Rule continues to impose minimal costs on businesses.

Finally, after consideration, and given the benefits to consumers relative to the costs associated with Rule enforcement, the Commission declines to adopt ESUS' position that rescinding the Rule ''would allow the FTC to rededicate limited internal resources to its core consumer protection and antitrust missions.'' [12]

IV. Conclusion

After considering the comment and the evidence, the Commission concludes (1) there is a continuing need for the Rule; (2) the Rule benefits consumers and businesses; (3) the Rule does not impose substantial economic burdens; and (4) the benefits outweigh the minimal costs the Rule imposes. Accordingly, the Commission has determined to retain the current Rule and is terminating this review.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2021–04196 Filed 3–1–21; 8:45 am]

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[3] Comment of Eversheds Sutherland (US) LLP at 3–5 (Sep. 3, 2020), available at *https://beta.regulations.gov/comment/FTC-2020-0047-0003.*

[4] *Federal Trade Commission: Prohibitions on Market Manipulation; Final Rule,* 74 FR at 40690, n.58 (Aug. 12, 2009) (citing Comment of Senator Maria Cantwell at 2); *see also* Comment of Senator Cantwell at 2 (''Congress, however, specifically intended for the Commission to exercise this new authority by working cooperatively and in tandem with the CFTC to prevent and deter any manipulative activity, including in the futures markets, which would affect wholesale petroleum markets.''). ESUS identifies the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank'') as a source of legal authority for the CFTC to regulate market manipulation of wholesale petroleum markets. The Commission notes that Senator Cantwell, who sponsored the EISA provision authorizing the Rule, also helped lead the effort to pass the Dodd-Frank provision to which ESUS refers. *Federal Trade Commission: Prohibitions on Market Manipulation; Final Rule,* 74 FR at 40704 (Aug. 12, 2009); *Commodity Futures Trading Commission: Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation; Final Rule,* 76 FR at 41410 (July 14, 2011).

[5] *Commodity Futures Trading Commission: Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation; Final Rule,* 76 FR at 41409 (July 14, 2011).

[6] *Federal Trade Commission: Prohibitions on Market Manipulation; Final Rule,* 74 FR at 40691 (Aug. 12, 2009).

[7] Federal Trade Commission, *Memorandum of Understanding Between the Commodity Futures Trading Commission and the Federal Trade Commission Regarding Information Sharing in Areas of Common Regulatory Interest,* at 1 ¶ 3 (Apr. 12, 2011), available at *https://www.ftc.gov/policy/cooperation-agreements/commodity-futures-trading-commission-federal-trade-commission.*

[8] Comment of Eversheds Sutherland (US) LLP at 8 (Sep. 3, 2020), available at *https://beta.regulations.gov/comment/FTC-2020-0047-0003.*

[9] *Id.* at 9.

[10] *Federal Trade Commission: Prohibitions on Market Manipulation; Final Rule,* 74 FR at 40701 (Aug. 12, 2009).

[11] Comment of Eversheds Sutherland (US) LLP at 6, 9 (Sep. 3, 2020), available at *https://beta.regulations.gov/comment/FTC-2020-0047-0003.*

[12] *Id.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0631; FRL–10018–05–Region 4]

Air Plan Approval; Tennessee; Nitrogen Oxides SIP Call Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision concerning nitrogen oxides (NO_X) emissions submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated December 19, 2019, which revises the Tennessee Air Pollution Control Rule (TAPCR) titled ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (TN 2017 NO_X SIP Call Rule) to correct the definition of ''affected unit'' and to clarify requirements related to stationary boilers and combustion turbines. EPA is also converting the conditional approval of the TN 2017 NO_X SIP Call Rule to a full approval.

DATES: This rule is effective April 1, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0631. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 can either be retrieved electronically via *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION**

CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone'' (''NO_X SIP Call''). The NO_X SIP Call required eastern states, including Tennessee, to submit SIPs that prohibit excessive emissions of ozone season NO_X by implementing statewide emissions budgets.[1] 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 the following sources to participate in a regional cap and trade program: Generally electric generating units (EGUs) with capacity greater than 25 megawatts (MW); and large industrial non-EGUs, such as boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour. The NO_X SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

On January 22, 2004, EPA approved into the Tennessee SIP the State's NO_X Budget Trading Program rule.[2] The NO_X Budget Trading Program was implemented from 2003 to 2008. The provisions required EGUs and large non-EGUs in the state to participate in the NO_X Budget Trading Program.

In 2005, EPA published the Clean Air Interstate Rule (CAIR), which required eastern states, including Tennessee, to submit SIPs that prohibited emissions consistent with ozone season (and annual) NO_X budgets. *See* 70 FR 25162 (May 12, 2005). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions with respect to not only ozone but also $PM_{2.5.}$ CAIR established several trading programs that EPA implemented through federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state, but not large non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and, at their discretion, could include other types of sources as well.[3] 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; however, the requirements of the NO_X SIP Call continued to apply.

On August 20, 2007, EPA approved into the Tennessee SIP an abbreviated CAIR SIP revision with allowance allocations and opt-in provisions.[4] On November 25, 2009, EPA approved into the Tennessee SIP a further abbreviated CAIR SIP revision expanding applicability of the CAIR ozone season NO_X trading program to NO_X SIP Call non-EGUs.[5]

In 2011, EPA published the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address the good neighbor provisions for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. *See* 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in eastern states, including Tennessee, to meet annual and ozone season NO_X emission budgets and annual SO_2 emission budgets implemented through new trading programs. Implementation of CSAPR began on January 1, 2015.[6] CSAPR also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements.

In 2016, EPA published the CSAPR Update to address the good neighbor provision for the 2008 ozone NAAQS. *See* 81 FR 74504 (October 26, 2016). Although for most covered states, EPA found the CSAPR Update may only partially address the states' good neighbor obligations for this NAAQS, EPA found the rule fully addresses Tennessee's good neighbor obligation for this NAAQS.[7] The CSAPR Update trading program replaced the original CSAPR trading program for ozone season NO_X for most covered states. Tennessee's EGUs participate in the CSAPR Update trading program, generally also addressing the state's obligations under the NO_X SIP Call for EGUs. However, Tennessee has not chosen to expand applicability of the CSAPR Update trading program to its large non-EGUs.

Through a letter to EPA dated February 27, 2017,[8] Tennessee provided a SIP revision to incorporate a new provision—TACPR 1200–03–27–.12, ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (TN 2017 NO_X SIP Call Rule)—into the SIP. The TN 2017 NO_X SIP Call Rule established a state control program for sources that are subject to the NO_X SIP Call, but not covered under CSAPR or the CSAPR Update. The TN 2017 NO_X SIP Call Rule contains several subsections that together comprise a non-EGU control program under which Tennessee will allocate a specified budget of allowances to affected sources. Subsequently, on May 11, 2018, and October 11, 2018, Tennessee submitted letters requesting conditional approval of the TN 2017 NO_X SIP Call Rule and committing to provide a SIP revision to EPA by December 31, 2019, to address a deficiency by revising the definition of ''affected unit'' to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. Based on the State's commitment to submit a SIP revision

[1] *See* 63 FR 57356 (October 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

[2] *See* 69 FR 3015 (January 22, 2004).

[3] CAIR had separate trading programs for annual sulfur dioxide emissions, seasonal NO_X emissions and annual NO_X emissions.

[4] *See* 72 FR 46388.

[5] *See* 74 FR 61535.

[6] *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

[7] *See* 81 FR at 74540. EPA notes that the aspects of the CSAPR Update affecting Tennessee were not challenged in the litigation over the rule and are not affected by the remand of the rule in *Wisconsin* v. *EPA,* 983 F.3d 303 (D.C. Cir. 2019).

[8] EPA notes that it received the submittal on February 28, 2017.

addressing the identified deficiency, EPA conditionally approved the February 27, 2017, submission. In the same action, EPA approved removal of the State's NO_X Budget Trading Program and CAIR rules from Tennessee's SIP. *See* 84 FR 7998 (March 6, 2019).

Tennessee submitted a SIP revision on December 19, 2019, which revised TAPCR 1200–03–27–.12, ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' to correct the definition of ''affected unit'' and to clarify requirements related to stationary boilers and combustion turbines. On June 8, 2020 (85 FR 35046), EPA published a notice of proposed rulemaking (NPRM) proposing to correct the definition of ''affected unit'' and to clarify requirements related to stationary boilers and combustion turbines. EPA also proposed to convert the conditional approval of the TN 2017 NO_X SIP Call Rule to a full approval. See EPA's June 8, 2020 (85 FR 35046), NPRM for further detail on these changes and EPA's rationale for approving them.

II. Response To Comment

EPA received one public comment on the June 8, 2020, NPRM. The comment is provided in the docket for this final rulemaking. EPA's response to this comment is below.

Comment: The commenter asserts that EPA should not approve this rule and that EPA should rescind its prior conditional approval of the TN 2017 NO_X SIP Call Rule. The commenter asserts that court rulings have found that EPA's reliance on modeling for the year 2023 was improper, and EPA must fully address upwind state's significant contribution by the applicable attainment date. The commenter further asserts that the CSAPR Update does not fully address downwind contributions under the *Wisconsin* and *New York* court decisions. The commenter also asserts that EPA cannot approve this action until it addresses the court decisions, including *Wisconsin, New York,* and *Maryland.*

Response: EPA disagrees with the comment that EPA should not approve this rule and should rescind its prior approval of the TN 2017 NO_X SIP Call Rule. As discussed above, EPA has already approved the TN 2017 NO_X SIP Call Rule, which addressed Tennessee's ongoing NO_X SIP Call obligations for existing and new large non-EGUs and which EPA conditionally approved due to a deficiency in the definition of affected unit. *See* 84 FR 7998 (March 6, 2019). In this action, EPA is approving into the Tennessee SIP changes to the TN 2017 NO_X SIP Call Rule that correct the definition of ''affected unit,'' clarify requirements related to stationary boilers and combustion turbines, and convert the conditional approval to a full approval. *See* NPRM. EPA has evaluated these changes, has determined that the changes correct the deficiency and provide clarifying edits that are consistent with the NO_X SIP Call and the CAA, and is approving those changes into the SIP. *See id.* In this action, EPA is not approving any changes to the NO_X SIP Call or to Tennessee's obligations under the NO_X SIP Call, and did not approve any such changes through its prior approval of the TN 2017 NO_X SIP Call Rule.[9]

With respect to the commenter's assertions regarding *Wisconsin, New York, Maryland,* and 2023 modeling, EPA believes these comments to be beyond the scope of this rulemaking. Nevertheless, EPA is providing the following explanation. The NO_X SIP Call fully addressed obligations under the good neighbor provision for the 1979 1-hour ozone NAAQS. In contrast, the CSAPR Update, which was at issue in *Wisconsin* v. *EPA,* 938 F.3d 303, 308–37 (D.C. Cir. 2019), and the CSAPR Close-out, which was at issue in *New York* v. *EPA,* 781 F. App'x 4 (D.C. Cir. 2019), involved obligations under the good neighbor provision for the 2008 ozone NAAQS. Further, *Maryland* v. *EPA,* 958 F.3d 1185 (D.C. Cir. 2020), which applied the *Wisconsin* decision in the context of EPA's denial of a petition under CAA section 126(b), included a discussion with regard to obligations for the 2015 ozone NAAQS. None of these cases bear on the approval action here, which has nothing to do with the selection of an analytic year or developing a full remedy for addressing good neighbor obligations.

III. Incorporation by Reference

In this document, 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 TAPCR 1200–03–27–.12, ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines,'' state effective December 12, 2019, which revises Tennessee's state control program to comply with the obligations of the NO_X SIP Call. EPA has made, and will continue to make the SIP generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the SIP, 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.

IV. Final Action

EPA is approving Tennessee's December 19, 2019, submission, which revises TAPCR 1200–03–27–.12, ''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines,'' to correct the definition of ''affected unit'' and to clarify requirements related to stationary boilers and combustion turbines. In addition, EPA is converting the March 6, 2019, conditional approval of TAPCR 1200–03–27–.12 to a full approval. EPA has concluded that these changes will not interfere with attainment and maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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);
- 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

[9] EPA is not reopening its prior rulemaking actions in this action.

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 May 3, 2021. Filing a petition for reconsideration by the 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: February 23, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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.*

Subpart RR—Tennessee

§ 52.2219 [Amended]

■ 2. Amend § 52.2219 by removing and reserving paragraph (a).

■ 3. In § 52.2220 amend Table 1 in paragraph (c) by revising the entry for ''Section 1200–3–27–.12'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
CHAPTER 1200–3–27 NITROGEN OXIDES				
*	*	*	*	*
Section 1200–3–27–.12	NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines.	12/12/2019	3/2/2021, [Insert citation of publication].	

* * * * *

[FR Doc. 2021–04061 Filed 3–1–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0037; FRL–10019–32–Region 5]

Air Plan Approval; Minnesota; Revision to Taconite Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising a Federal implementation plan (FIP) addressing the requirement for best available retrofit technology (BART) for the United States Steel Corporation's (U.S. Steel) taconite plant located in Mt. Iron, Minnesota (Minntac or Minntac facility). We are revising the nitrogen oxides (NO_X) limits for U.S. Steel's taconite furnaces at its Minntac facility because new information has come to light that was not available when we originally promulgated the FIP on February 6, 2013. The EPA is finalizing this action pursuant to sections 110 and 169A of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective April 1, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2010–0037. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information 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 *http://www.regulations.gov* or at the EPA Region 5 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for availability information).

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning & Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background Information

On February 6, 2013, EPA promulgated a FIP that included BART limits for certain taconite furnaces in Minnesota and Michigan (2013 Taconite FIP; 78 FR 8706). On February 4, 2020, EPA proposed to revise the 2013 Taconite FIP with respect to the NO_X BART emission limitations and compliance schedules for U.S. Steel's Minntac facility in Minnesota. (85 FR 6125).

Specifically, EPA proposed that an aggregate emission limit of 1.6 lbs NO_X per million British Thermal Unit (MMBtu), based on a 30-day rolling average, averaged across Minntac's five production lines, represents NO_X BART for the Minntac facility. An explanation of the CAA requirements, a detailed analysis of how these requirements apply to U.S. Steel's Minntac facility, and EPA's reasons for proposing the revised limit and compliance schedule were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on March 5, 2020.

One commenter stated that EPA did not provide information regarding a public hearing and did not ask the public if they were interested in a public hearing. To address this comment, EPA held a virtual public hearing on October 14, 2020, and reopened the public comment period. The second comment period closed on November 13, 2020. The commenter also stated that EPA did not demonstrate that the agency consulted with Federal Land Managers (FLMs) regarding the proposed FIP revision. In response to this comment, EPA engaged with the FLMs on the revision to the taconite FIP for Minntac. The FLMs have indicated that they have no comments on the FIP revision.

II. Public Comments

During the first comment period EPA received adverse comments submitted on behalf of the National Parks Conservation Association and the Minnesota Center for Environmental Advocacy, an adverse comment submitted anonymously, and a comment from a private citizen in support of the February 4, 2020 proposal. We also received an anonymous comment that addresses subjects outside the scope of our proposed action. The adverse comments are summarized and addressed below. No one presented testimony at the October 14, 2020 virtual public hearing. The transcript of the hearing is available in the docket. We received no comments during the second comment period.

Comment 1: The 2013 FIP included case-by-case determinations and emission limits for each of the BART units at Minntac, as follows: 1.2 lbs NO_X/MMBtu when burning natural gas and 1.5 lbs NO_X/MMBtu when co-firing coal and natural gas. This was done in accordance with the CAA where BART is defined as ''an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility.'' This emission limit is to be established on a case-by-case basis after considering the five statutory factors.

EPA's 2020 proposal would provide a single facility-wide NO_X BART limit of 1.6 lbs/MMBtu that will apply on a rolling 30-day basis. Contrary to the CAA and BART Guidelines, for each Minntac source subject to BART, EPA abandons its 2013 BART determination and now proposes a FIP revision that neglects its obligation to ensure limits reflect BART emission rates that are of the appropriate type and level for each source subject to BART. Without revised individual BART determinations for each of the five Minntac units EPA cannot demonstrate that reductions achieved by the facility-wide limit will be equal to the reductions obtained by controlling the individual units. While the Minntac Spreadsheet in the docket contains information on 95th and 99th percentile and highest 720-hour averages, it seems EPA decided to ignore the percentile values, and rather propose U.S. Steel's averaging approach.

Response: The August 15, 2012 Proposed FIP (77 FR 49312–49313) included a five-step BART analysis for Minntac's five lines (Lines 3–7). The five-step analysis was conducted in accordance with the BART Guidelines, appendix Y to 40 CFR part 51. EPA proposed BART emission limits of 1.2 lbs NO_X/MMBtu measured on a 30-day rolling average based on the use of low NO_X burners. EPA's analysis and proposed determination that BART is based upon the use of low NO_X burners remains valid. In the February 6, 2013 Final FIP (78 FR 8706), based on a comment from U.S. Steel regarding the appropriate emission limit when burning solid fuels and supplementary data submitted by U.S. Steel on October 15, 2012,[1] EPA finalized a limit for each of Minntac's five lines of 1.5 lbs NO_X/MMBtu measured on a 30-day rolling average; however, a limit of 1.2 lbs NO_X/MMBtu measured on a 30-day rolling average would apply for any 30 or more consecutive days when only natural gas is used. The final 2013 FIP limits reflected what EPA determined could be reasonably achieved by the use of low NO_X burners at taconite furnaces based on the limited emission data available.

At the time EPA promulgated the BART emission limits for Minntac, low NO_X burners had only been in operation on Minntac Lines 6 and 7 since April 2011 and May 2010, respectively, and there were very little emission data available upon which to base a limit. Since promulgation of the FIP, however, U.S. Steel submitted continuous emission monitoring system (CEMS) data demonstrating that despite having optimized each burner,[2] Minntac is unable to comply with the 1.2 lbs NO_X/MMBtu limit at all times when burning only natural gas.

EPA continues to rely on the BART analysis set forth in the August 15, 2012 proposal concerning the selection of low NO_X burners as the appropriate BART

[1] *See* ''US Steel Comments—Proposed FIP MN and MI'' and ''10–15–2012 email from C. Bartovich to S. Rosenthal'' and attachments, included in the docket.

[2] *See* ''IV.F. U.S. Steel Minntac Line 6 Low NO_X Burner Final Report, December 1, 2011,'' ''III.F. U.S. Steel Minntac9.m. U.S. Steel Minntac Line 7 Burner Final Report, May 13, 2011,'' and ''Final Report Line 4 Burner 092917,'' included in the docket.

technology. However, since EPA promulgated the BART limits for Minntac, U.S. Steel has continued to operate low NO_X burners on Lines 6 and 7 and has installed low NO_X burners on Lines 4 and 5.[3] There are significantly more data available from which to determine whether the BART FIP emission limits are actually achievable through the utilization of low NO_X burners at Minntac. To reevaluate the emission limit achievable by use of low NO_X burners, EPA analyzed available hourly CEMS data showing emissions in lbs NO_X/MMBtu by fuel type. These data were available for the 2012–2017 time period. From this data set, EPA then compiled the emission data available for each line after the installation of low NO_X burners. For Line 4, this included data from December 15, 2016 through November 19, 2017. For Line 5, this included data from December 12, 2015 through November 11, 2017. For Lines 6 and 7, emission data were available from May 8, 2012 and April 27, 2012 through November 11, 2017, respectively. There are necessarily differing amounts of CEMS data for each line since the low NO_X burners were installed at different times.

To ensure that any revised emission limit would be based upon emission reduction capabilities during normal operations, EPA excluded hours when a line was idle, when a measurement error was recorded, or when process or CEMS codes indicated anything other than normal operation. For each line, EPA separated hours when only natural gas was burned from hours when the line was co-fired with coal (Lines 6 and 7) or co-fired with biomass (Lines 4 and 5). EPA then calculated 720-hour rolling averages based upon fuel type.[4] To establish an achievable emission limit, EPA assessed the highest 720-hour average, the 99th percentile 720-hour average, and the 95th percentile 720-hour average.[5] The 99th percentile is the emission rate that the source would be predicted to be below during 99 out of 100 720-hour averages. The 95th percentile is the emission rate that the source would be predicted to be below during 95 out of 100 720-hour averages. The highest 720-hour average is the emission rate at which the source would be predicted to be able maintain continual compliance.

Under the BART Guidelines, a source may be permitted to average emissions across a set of BART-eligible emission units within a fenceline, so long as the emission reductions from each pollutant being controlled for BART would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute the BART-eligible source. See 40 CFR part 51, appendix Y, at V. U.S. Steel expressed interest in utilizing this option. As shown in Table 1 below, averaging the individual limits across Lines 4 through 7 for natural gas results in a combined emissions limit of 1.6 lbs NO_X/MMBtu averaged over 720 hours, regardless of whether the single line emission limit basis for the cross-line average was the highest 720-hour average, the 99th percentile 720-hour average, or the 95th percentile 720-hour average.

TABLE 1—INDIVIDUAL LINE AND CROSS-LINE AVERAGING EMISSION RATES FOR LINES 4 THROUGH 7

	Fuel	High 720-hr average lbs NO_X/MMBtu	99% 720-hr average lbs NO_X/MMBtu	95% 720-hr average lbs NO_X/MMBtu
Line 4	Natural Gas	1.5	1.5	1.5
	All Fuels	1.5	1.4	1.4
Line 5	Natural Gas	1.4	1.4	1.4
	All Fuels	1.4	1.4	1.3
Line 6	Natural Gas	1.7	1.6	1.6
	All Fuels	1.7	1.6	1.4
Line 7	Natural Gas	1.9	1.8	1.8
	All Fuels	1.9	1.8	1.7
Cross-line Average	Natural Gas	1.6	1.6	1.6
	All Fuels	1.6	1.6	1.5

While Line 3 will not become subject to the FIP limits until July 2021, U.S. Steel has indicated that, when compared to the other lines, the Line 3 burner is most similar to Line 4. Line 4 is more similar in age, size and design to Line 3 than the other lines. Line 3 utilizes the same fuels (natural gas and biomass) as Line 4, and both Lines are managed by the same control room operators. In addition, operating parameters on Line 3 are similar to Line 4 for such measured parameters as Kiln Exit Temperature, Preheat Zone Temperature, Burner Temperature, and Pellet Residence time on the grate and in the kiln. Absent an engineering study for Line 3, using the emission rates for Line 4 as an estimate of the emission rates that would be expected after installation of a low NO_X burner on Line 3 is reasonable. Therefore, EPA also calculated a cross-line average considering actual emissions from all four lines currently utilizing low NO_X burners (Lines 4 through 7), as well as the expected emissions from Line 3. The resulting cross-line average is 1.6 lbs NO_X/MMBtu averaged over 720 hours, regardless of selection of statistical analyses at the 99th or 95th percentiles, or highest 720-hour average.

While the 1.6 lbs NO_X/MMBtu limit for Minntac is reflective of natural gas emission data, in response to the comment received, EPA calculated 720-hour rolling averages for each line over the entire period without separating fuel types. As provided in Table 1, the data

[3] U.S. Steel installed low NO_X burners on Lines 4 and 5 on December 15, 2016, and December 20, 2015, respectively.

[4] Operations at Minntac in a given 30-day period, or even a single day, may in some cases involve both operation with only natural gas and operation with at least some firing of solid fuels. To be able to evaluate emissions from all hours when different fuels were used within a 30-day period, rather than only the times when a line used solely natural gas or solely co-fired for 30 consecutive days, EPA evaluated emissions based on 720-hour averages. Note that operations are typically 24 hours per day and 720 is the number of hours in a 30-day period.

[5] *See* Lines 3, 4, and 5 Data-L4_7 NO_X Data files combined,'' included in the docket.

analysis showed that the cross-line averages at the highest 720-hour average across all data and also at the 99th percentile is 1.6 lbs NO_X/MMBtu, and at the 95th percentile is 1.5 lbs NO_X/MMBtu. In addition, review of the CEMS data shows that U.S. Steel has largely transitioned toward firing with natural gas and away from co-firing with coal and natural gas. U.S. Steel stated that it ''has been primarily combusting natural gas since December 2016.'' [6] As previously stated, only two of Minntac's five lines (Lines 6 and 7) are capable of burning coal, and CEMS data show that U.S. Steel has largely shifted its operations on Lines 6 and 7 away from co-firing with coal and natural gas and toward firing exclusively natural gas. While Lines 6 and 7 co-fired with coal and natural gas 85% of the time in 2012, these lines co-fired with coal and natural gas only 3% of the time in 2017.[7]

EPA has determined that the 1.6 lbs NO_X/MMBtu cross-line emission limit constitutes the appropriate BART emission limit for Minntac Lines 3 through 7, regardless of fuel type. As previously discussed, the BART Guidelines provide that a source may be permitted to average emissions across a set of BART-eligible units within a fenceline, so long as the emission reductions from each pollutant controlled for BART would be equal to those reductions that would be obtained by separately controlling each of the BART-eligible units that constitute the BART-eligible source. 40 CFR part 51, appendix Y, at V. Minntac Lines 3, 4, 5, 6, and 7 are all BART-eligible units that constitute a BART-eligible source within a fenceline. When averaging the level of NO_X emission reductions achievable on each of Minntac Lines 3 through 7 individually, the resulting limit is 1.6 lbs NO_X/MMBtu when burning natural gas. Therefore, it is reasonable for EPA to establish a single cross-line average emission limit of 1.6 lbs NO_X/MMBtu, to apply at all times, for Minntac Lines 3 through 7. 1.6 lbs NO_X/MMBtu is the most stringent limit the facility can consistently meet while providing for operational flexibility with regard to fuel choice, including burning exclusively natural gas.

Comment 2: EPA's proposal lacks alternative BART emission limits based on the type of fuel each line will burn under the FIP. Although the BART Guidelines are fuel-neutral, where a source wants to operate under different scenarios and burn different fuels that create different levels of BART pollutant emissions, EPA must first set alternative BART emission limits for each unit based on fuel use. EPA's 2013 FIP promulgated two BART emission limits based on fuel use, which apply to all five BART units: A limit when burning natural gas, and second limit when co-firing coal and natural gas. The record indicates the BART units historically used a variety of fuels, which included: Coal; wood; co-firing; biomass; and natural gas. EPA's proposed facility-wide BART limit relies on emission data collected when only one fuel was used, natural gas. EPA fails to analyze the range of fuels burned at Minntac and how the fuel burned impacts revising the prior BART determinations.

Response: EPA disagrees with the commenter's contention that EPA must set alternative BART emission limits for each unit based on fuel use. Neither the CAA nor the regional haze rule requires EPA to establish separate BART limits based on fuel type. While the 1.6 lbs NO_X/MMBtu limit for Minntac is reflective of natural gas emission data, EPA evaluated all available CEMS data for 2012–2017. These data are reflective of scenarios where lines were burning exclusively natural gas and scenarios when lines were co-firing with solid fuels.

We are under no obligation to set fuel-specific limits and are not doing so here. EPA has determined that 1.6 lbs NO_X/MMBtu is the most stringent limit the facility can consistently meet while providing for operational flexibility with regard to fuel choice, including burning exclusively natural gas. As discussed previously in response to Comment 1, in response to comments received, EPA calculated 720-hour rolling averages for each line over the entire period without separating fuel types (the ''All Fuels'' scenario). The data demonstrate that the cross-line averages at the highest 720-hour average across all data and also at the 99th percentile is 1.6 lbs NO_X/MMBtu, and at the 95th percentile is 1.5 lbs NO_X/MMBtu. However, as previously explained, to allow for fuel choice and a scenario in which the facility burns only natural gas, 1.6 lbs NO_X/MMBtu is the appropriate limit for the facility.

Comment 3: The agency suggests using the new data to revise the five BART determinations in its 2013 FIP. EPA fails to provide a reasoned analysis for using the new data to revise its prior determination. EPA's prior determination found that once low NO_X burners were installed and burned natural gas, NO_X emissions were lower than when co-firing coal and natural gas, and therefore, based the 2013 FIP BART emission limits on its record and findings. EPA's 2020 proposal flips its prior determination, contending that NO_X emissions are higher when burning only natural gas, as compared to co-firing coal and natural gas.

Response: EPA's August 15, 2012 proposed FIP approval includes an analysis and proposed determination that BART for Minntac is based upon the use of low NO_X burners. In the 2013 FIP final rule, EPA finalized this determination. EPA's analysis concerning low NO_X burners as representing BART for Minntac continues to remain valid and it is appropriate for EPA to rely on it in this action. As discussed above, at the time EPA established limits in the 2013 FIP, low NO_X burners had only been in operation on Lines 6 and 7 since April 2011 and May 2010, respectively, and there were limited emission data available upon which to base a limit. However, since that time, U.S. Steel has continued to operate low NO_X burners on Lines 6 and 7 and has installed low NO_X burners on Lines 4 and 5. Therefore, as discussed in the response to Comment 1, there are significantly more data available from which to determine whether the BART FIP emission limits are actually achievable through the utilization of low NO_X burners at Minntac.

Comment 4: EPA's approach is not permissible under the Act. Instead of proposing BART emission limits based on maximum controls, EPA's proposal uses the new data from the operating scenario that is the least effective at controlling NO_X emissions to derive a BART emission limit, and then suggests applying the least effective control at all five BART units, regardless of what the unit burns.

Response: The control technology used as the basis for establishing BART limits in the 2013 FIP has not changed. Since promulgation of the 2013 FIP, however, our understanding of the emissions levels achievable through the use of this technology has changed. The emission limits initially promulgated under the 2013 FIP were based on the installation and optimization of a low NO_X burner on Lines 6 and 7, and the limited CEMS data available at that time. Since promulgation of the 2013 FIP, U.S. Steel has continued to collect CEMS data from Lines 6 and 7. U.S. Steel has also installed low NO_X burners on Lines 4 and 5, has adjusted and optimized each of those burners to reduce NO_X, and has collected CEMS data for each of the lines. EPA based the 1.6 lbs NO_X/MMBtu limit on the

[6] *See* Redacted ''U. S. Steel Confidential Settlement Communication—Subject to FRE 408,'' May 1, 2018, included in the docket.

[7] *See* ''Minntac CEMS Data and Analysis,'' included in the docket.

emission rates demonstrated by the CEMS data to be achievable by low NO_X burners, which is the technology determined to be the basis for BART. The 1.6 lbs NO_X/MMBtu limit is the most stringent limit the facility can consistently meet while providing for operational flexibility with regard to fuel choice. Contrary to commenter's assertion, EPA did not base the 1.6 lbs NO_X/MMBtu limit on the projected emission rates achievable by the least effective control technology.

Comment 5: There is nothing in the record to suggest all lines will be capable of and restricted to burning natural gas nor that the company plans to burn natural gas exclusively.

Response: The CEMS data clearly demonstrate that all lines are capable of burning natural gas. EPA is not restricting U.S. Steel to only burning natural gas at Minntac. Should U.S. Steel choose to periodically co-fire with coal or biomass on one or more of its lines, the facility will remain subject to the 1.6 lbs NO_X/MMBtu limit regardless of fuel type.

Comment 6: EPA fails to provide a basis for the cherry-picked and incomplete data. EPA's NPRM notes it evaluated six years of CEMS data, not specifying which years were evaluated. EPA provides neither an analysis of nor a justification for using such disparate data. While EPA explains the data represent operations at the taconite furnaces under various production scenarios, it fails to explain what these scenarios are and whether they represent the full range of future scenarios. EPA provides no explanation to justify its use of this limited data set.

Response: As described previously, EPA used the full suite of CEMS data available for each line after the installation of low NO_X burners. The document entitled ''Minntac CEMS Data and Analysis,'' included in the docket, identifies the date and hour of each emission data point used in the calculations. The earliest data available that provided hourly NO_X emission data in lbs NO_X/MMBtu along with the corresponding fuel type began in 2012 and was provided through 2017. From this data set, EPA then compiled the emission data available for each line after the installation of low NO_X burners. For Line 4, this included data from December 15, 2016 through November 19, 2017. For Line 5, this included data from December 12, 2015 through November 11, 2017. For Lines 6 and 7, emission data were available from May 8, 2012 and April 27, 2012, respectively, through November 11, 2017. There are necessarily differing amounts of data for each line since the low NO_X burners were installed at different times. To establish a limit based on emissions reflective of normal operating conditions, EPA excluded hours when the process was idle, when a measurement error was recorded, or when process or CEMS codes indicated anything other than normal operation.

With respect to operating scenarios, EPA does not claim that the data evaluated represent the full range of possible future operating scenarios. Rather, the initial emission limits in the 2013 FIP were based upon very limited CEMS data from Lines 6 and 7. Operations at Lines 6 and 7 over the 2012–2017 time period showed varying production levels, fuels, pellet types and different ore mixes. In addition, we now have CEMS data for Lines 4 and 5 reflecting the installation of low NO_X burners. The available CEMS data provide information on NO_X emissions over time which encompass more operating scenarios than were represented by the limited data available at the time EPA promulgated the 2013 FIP. As the CEMS data [8] available in the docket show, the 1.2 lbs NO_X/MMBtu limit promulgated under the 2013 FIP and intended to apply when burning only natural gas cannot be consistently achieved at Minntac during normal operations with low NO_X burners.

Comment 7: Although EPA's NPRM explains that U.S. Steel also provided hourly NO_X emissions data in lbs/MMBtu for Line 3, which has not yet installed low NO_X burner technology, the NPRM provides no information on where this information is available.

Response: This information was erroneously omitted from the docket. The docket has been updated to include this information.[9]

Comment 8: For the past ten years, 2009 through 2018, the NO_X emissions reported by U.S. Steel have been relatively constant. EPA fails to explain why emissions remain constant even though U.S. Steel reports it installed low NO_X burners on four of the five lines subject to BART. EPA also fails to provide an explanation for why there has been an increase in NO_X emissions in the years following installation of the low NO_X burner. This suggests that U.S. Steel did not optimize the low NO_X burners from 2014 through 2017.[10]

Response: Commenter references a figure provided by commenter that: (1) Shows the 2002 baseline annual emissions for Minntac included in Minnesota's December 30, 2014 Five-Year Regional Haze Progress Report SIP submittal,[11] and (2) plots annual production and annual NO_X emissions at Minntac. The figure does not accurately reflect U.S. Steel's implementation and optimization of low NO_X burners at Minntac. First, the annual NO_X emissions included in the commenter's figure do not represent annual emissions from only the indurating furnaces, but rather represent facility-wide NO_X emissions. Second, by definition, BART is ''based on the degree of reduction achievable through the application of the best system of continuous emission reduction.'' [12] EPA is setting a cross-line average for Minntac Lines 3 through 7 of 1.6 lbs NO_X/MMBtu, averaged over 30 days, which is a rate-based limit based on the degree of reduction achievable through the use of low NO_X burners. Commenter conflates the rate-based emission limit with total annual NO_X emissions from the facility. Since we are setting a rate-based emission limit, which does not constrain production levels, total annual NO_X emissions may fluctuate in a given year even while the source is in compliance with its BART emission rate. For example, if production increases, total NO_X emissions in tons per year would be expected to increase as well. If production decreases, total NO_X emissions in tons per year (tpy) would be expected to decrease. Under all production scenarios, the lbs of NO_X/MMBtu rate-based emission limit remains applicable. Finally, the production levels shown in the figure represent facility-wide production. The figure provided by the commenter does not differentiate production contributions by line, *i.e.,* what percentage of total production comes from individual lines which had low NO_X burners installed at the time vs. lines which did not have low NO_X burners installed at the time.

Notwithstanding the above-noted limitations regarding the figure provided by the commenter, nonetheless, some information can be gained by looking at the difference between production and emissions over time, as represented by the distance

[8] *See* ''Minntac CEMS Data and Analysis,'' included in the docket.

[9] *See* ''Lines 3, 4, and 5 Data-L4_7 NO_X CEMS Data files combined.''

[10] Commenter refers to a figure provided by commenter that purports to show 2002 baseline emissions from Minnesota's state implementation plan (SIP) submittal along with plots of facility-wide NO_X emissions in tons per year (tpy) and facility-wide production for the period 2007 through 2018. See *NPCA and MCEA Comments on the Proposed Revision to Minnesota Taconite Federal Implementation Plan for U.S. Steel Minntac,* at p. 11, Figure 2.

[11] Note commenter used incorrect numbers 14,294 vs 14,924.

[12] *See* 40 CFR 51.301.

between the NO_X line and production line in the figure. From 2007 through 2009, before the installation of low NO_X burners, these lines are relatively close together. In 2010, the year when the low NO_X burner was installed on Line 7, production rose dramatically while annual NO_X emissions did not. Visually, there is a significant divergence between the NO_X and production lines in the figure, indicating an increase in production without a commensurate increase in emissions. Correspondingly, after the low NO_X burner was installed on Line 6 in 2011, the figure shows production increased between 2010 and 2011 while emissions decreased. Low NO_X burners were installed on Lines 5 and 4 in December 2015 and December 2016, respectively. Similarly, the figure shows NO_X emissions between 2015 and 2017 did not increase at the same rate as production.

Using the available CEMS data for the 2012–2017 time period, EPA further evaluated the differences between various NO_X emission values pre and post-installation of low NO_X burners on Lines 4 and 5.[13] Data for both lines showed a decrease in the average lbs NO_X/MMBtu, high 720-hour average lbs NO_X/MMBtu, and 99th percentile lbs NO_X/MMBtu. Even the average lbs NO_X/hour, which does not account for variations in production levels, decreased. U.S. Steel did not provide CEMS data for Lines 6 and 7 for the period prior to the installation of low NO_X burners, so a similar comparison cannot be made for these lines.

Finally, the commenter asserts that the data suggest that U. S. Steel failed to optimize operation of the low NO_X burners from 2014 through 2017. As discussed in detail in responses to comments 9 and 14 in this document, after installation of the low NO_X burner on each line, U.S. Steel optimized burner operation for NO_X reduction while maintaining pellet quality. In addition, Minntac has remained subject to the limits in the 2013 FIP.

Comment 9: EPA did not explain how U.S. Steel arrived at its conclusion that the low NO_X burners at each of the lines were optimized and functioning at their best. In prior regional haze actions, when the level of control has been uncertain at the time of EPA's final action, EPA requires a control technology demonstration, with explicit requirements for optimization of the control technology system. EPA's 2014 final FIP requirements for Arizona plants included a control technology demonstration project for the emission control system at each plant, which entailed the collection of data and preparation of an optimization protocol that would be used to determine if a higher control efficiency would be achievable. There is no evidence that EPA required and oversaw implementation of a control technology project. Moreover, the BART Guidelines require the consideration of improvements to the low NO_X burner controls (40 CFR part 51, appendix Y, at IV. D. Step 1¶ 9).

Response: U.S. Steel has documented optimization studies at Lines 4, 5, 6, and 7 in final testing reports for each line. Final testing reports for Lines 6 and 7 and preliminary data for Lines 4 and 5 are included in the docket. In addition, U.S. Steel submitted final testing reports for Lines 4 and 5, titled ''Final Report Line 4 Burner 092917.'' This document has also been added to the docket. In each report, U.S. Steel describes challenges encountered over the course of installing, operating, and testing each low NO_X burner, and discusses how certain design and operational changes were found to optimize operation of each line's low NO_X burners. As explained in the reports, U.S. Steel evaluated operation of each low NO_X burner to ensure each burner can operate in a manner that reduces NO_X emissions while making pellets that meet quality specifications. Each burner was evaluated according to hourly CEMS data and during expected operating scenarios, including while burning natural gas, solid fuels, and a combination of natural gas and solid fuels. Over the course of the testing, U.S. Steel identified several problems occurring at various stages of low NO_X burner operation and prescribed specific design and operational changes to improve operation in each scenario. U.S. Steel states that each of the proposed solutions and design changes—including adding blowers, increasing combustion air fan speed and capacity, adding rings to combustion air annuli, and adjusting and monitoring atomizing air and gas splits—were implemented in consultation with the burner manufacturer to optimize low NO_X burner operation and NO_X reduction. In each case, U.S. Steel determined optimization of the low NO_X burners involves achieving stoichiometric ratios of air to fuel at levels that create a tight flame shape in order to minimize NO_X while ensuring proper process operation. U.S. Steel continues to monitor CEMS data and burner parameters to ensure the burners are operating effectively.

As explained in response to Comments 1 and 3, at the time EPA established limits in the 2013 FIP, low NO_X burners had only been in operation on Lines 6 and 7 since April 2011 and May 2010, respectively, and there were limited CEMS data available upon which to base a limit. However, since EPA promulgated the initial BART limits for Minntac in the 2013 FIP, U.S. Steel has continued to operate low NO_X burners on Lines 6 and 7 and has installed low NO_X burners on Lines 4 and 5.[14] There are significantly more data available from which to determine whether the 2013 FIP emission limits are actually achievable through the utilization of low NO_X burners at Minntac. In addition, and as noted above, U.S. Steel has submitted final testing reports for Lines 4 through 7 that detail U.S. Steel's optimization efforts for each of these low NO_X burners. In contrast to the scenario cited by commenter where the control technology had not yet been installed and only minimal data were available regarding performance of the control technology at issue, EPA is basing the revised limit for Minntac on actual CEMS data. U.S. Steel has also provided information concerning its low NO_X burner optimization efforts for Minntac Lines 4 through 7 and has provided post-optimization emissions data for Lines 4 through 7.

In the Arizona 2014 Regional Haze FIP (79 FR 52420) cited by the commenter, EPA stated the following with regard to Selective Non-Catalytic Reduction (SNCR) at lime kilns: ''While this type of control technology demonstration is not typically required as part of a regional haze plan, we consider it to be appropriate here, given the minimal data available about the performance of SNCR at lime kilns.'' (79 FR 52440). With regard to SNCR at cement kilns, we explained, ''While this type of control technology demonstration is not typically required as part of a regional haze plan, we consider it to be appropriate here, given the significant variability in control efficiencies achievable with SNCR at cement kilns.'' (79 FR 52456; 79 FR 52462). The control technologies required for lime kilns and cement kilns in the 2014 Arizona FIP had not yet been installed at the time the Arizona FIP was promulgated. This is a different scenario than the situation we are addressing with regard to Minntac.

Commenter cites to the BART Guidelines at 40 CFR part 51, appendix

[13] *See* ''Emission reduction estimates'' and ''Lines 3, 4, and 5 Data-L4_7 NO_X CEMS Data files combined for docket,'' included in the docket.

[14] U.S. Steel installed low NO_X burners on Lines 4 and 5 on December 15, 2016, and December 20, 2015, respectively.

Y, at IV. D. Step 1¶ 9. However, section IV.D. addresses the five steps of a case-by-case BART analysis, with Step 1 being the identification of all available retrofit control technologies. As discussed in response to Comment 1, the August 15, 2012 Proposed FIP (77 FR 49312–49313) included a five-step BART analysis for Minntac's five lines (Lines 3–7). The five-step analysis was conducted in accordance with the BART Guidelines. EPA's analysis and proposed determination that BART is based upon the use of low NO_X burners remains valid and EPA continues to rely upon that analysis. We are not conducting a new five-step BART analysis. In this action, we are only revising the NO_X emission limits for Minntac to reflect the level of emission reductions consistently achievable by low NO_X burners, which is the control technology determined to represent BART for Minntac in the 2013 FIP.

Comment 10: 42 U.S.C. 7607(d)(2) requires that EPA's proposed action include ''the methodology used in obtaining the data.'' While the docket includes an Excel spreadsheet of CEMS data, there is no explanation provided regarding the methodology and test methods used to obtain the data. Furthermore, there is nothing in the record to indicate U.S. Steel's recent data was accompanied by a certification statement. Therefore, EPA's proposal fails to comply with the Act's methodology disclosure requirements and the public is unable to confirm accuracy and completeness of the data.

Response: 42 U.S.C. 7607(d)(2) includes requirements pertaining to the establishment of a rulemaking docket. 42 U.S.C. 7607(d)(3), however, does require EPA to include a summary of ''the methodology used in obtaining the data and in analyzing the data.'' At proposal, we explained how EPA obtained the CEMS data. Specifically, we stated, ''[t]o justify this limit, U.S. Steel provided EPA with hourly NO_X emissions data in lbs/MMBTU documenting actual emissions levels after installation of [low NO_X burner] technology on Minntac Lines 4–7. U.S. Steel also provided hourly NO_X emissions data in lbs/MMBTU for Line 3, which has not yet installed [low NO_X burner] technology.'' (85 FR 6126).

In response to EPA's CAA section 114 request for information regarding Minntac, U.S. Steel provided CEMS data for Lines 3, 4 and 5 covering the time period from January 1, 2012 through August 9, 2016 as well as CEMS data for Lines 6 and 7 covering the time period from July 24, 2015 through August 9, 2016. The response included a certification of the accuracy and completeness of the information provided. U.S. Steel's letter responding to the CAA section 114 information request, as well as the certification, has been added to the docket.

In response to additional requests from EPA that were not made under CAA section 114, U.S. Steel provided CEMS data for Lines 6 and 7 for the period of April 27, 2012 through July 24, 2015 and for Lines 4 through 7 for the period of August 2016 to November 2017. However, Minntac's CEMS were certified on Agglomerator Waste Gas Lines 6 & 7 on June 2–3, 2005. The CEMS were certified on Waste Gas Lines 3, 4 & 5 on January 24, 2007, January 31, 2007 and February 1, 2007, respectively. Further, Minntac is subject to the CEMS requirements of the 2013 FIP, which may be found at 40 CFR 52.1235(c) and include the requirement that CEMS ''be installed, certified, calibrated, maintained, and operated in accordance with 40 CFR part 60, appendix B, Performance Specification 2 (PS–2) and appendix F, Procedure 1.'' Minntac's title V permit also specifies that the CEMS meet the requirements of 40 CFR part 60 appendix B and F and Minnesota rule 7017 for monitoring and testing requirements. Pursuant to their title V permit, U.S. Steel must annually certify its compliance with title V. EPA has no reason to question the accuracy and completeness of the CEMS data supplied.

In addition, the document, *Minntac CEMS Data and Analysis,* is included in the docket and contains EPA's analysis of the data provided by U.S. Steel.[15]

Comment 11: While U.S. Steel expressed apprehensions about fluctuating emissions due to ''concerns regarding ore blend,'' and EPA appears to rely on this in proposing to revise the FIP, there is no information in the record to substantiate ore blend variability. Nor is there any information in the record that explains how fluctuations in ore blend impact the ability of low NO_X burners to control NO_X emissions. EPA's assertions appear to suggest that it assumes the fluctuations go in one direction, adding a ''safety margin'' to the facility-wide limit, without providing a reasoned basis.

Response: EPA did not consider ore blends in proposing to revise the FIP. EPA did provide a reasoned basis for the 1.6 lbs NO_X/MMBtu emission limit. This is the limit demonstrated by the CEMS data to be achievable by low NO_X burners, which is the technology determined to be the basis for BART. The 1.6 lbs NO_X/MMBtu limit is the most stringent limit the facility can consistently meet while providing for operational flexibility with regard to fuel choice. EPA did not add a safety margin to the limit as commenter suggests.

Comment 12: EPA's proposal suggests that given the trajectory of fuel markets, EPA has no reason to believe that U.S. Steel will not continue to use natural gas at Minntac. EPA provides neither information about fuel markets nor a trajectory. Even if such information were provided, reliance on market projections is not an acceptable justification. Projections are just that, merely projections, and EPA lacks authority to rely on them. Moreover, in responding to the Petitions for Reconsideration on its 2013 FIP, EPA explained that ''the taconite industry has demonstrated that it can re-engineer furnaces to adapt to market changes (such as fuel prices)'' and EPA found that ''at U.S. Steel's Minntac facility, where low NO_X burners have been installed and are in operation, there has been no fuel penalty.''

Response: The 1.6 lbs NO_X/MMBtu limit for Minntac represents the most stringent limit the facility can consistently meet while providing for operational flexibility to burn exclusively natural gas. As discussed previously in response to Comments 2 and 4, U.S. Steel's production and fuel use data show that U.S. Steel has been moving toward using natural gas rather than co-firing with coal. Minntac Lines 6 and 7 (the only lines that capable of burning coal) have shifted fuel use dramatically over the six years evaluated, from 15% natural gas in 2012 to 97% natural gas in 2017. The 1.6 lbs NO_X/MMBtu limit represents the most stringent limit the facility can consistently meet while providing operational flexibility with regard to fuel choice—including, for example, in response to market changes, the option to burn exclusively natural gas. Should

[15] See ''Minntac CEMS Data and Analysis,'' Docket ID # EPA–R05–OAR–2010–0037–0110, *available at https://www.regulations.gov/document?D=EPA-R05-OAR-2010-0037-0110.* We note that the document, *Redacted US Steel Proposal to EPA Minntac 5–1–2018,* was erroneously listed on regulations.gov as an attachment to *Minntac CEMS Data and Analysis* under Docket ID # EPA–R05–OAR–2010–0037–0110. *Minntac CEMS Data and Analysis* and *Redacted US Steel Proposal to EPA Minntac 5–1–2018* are two distinct documents. *Minntac CEMS Data and Analysis* is an Excel file containing EPA's analysis of CEMS data for Minntac. *Redacted US Steel Proposal to EPA Minntac 5–1–2018* is a redacted version of a settlement communication provided by U.S. Steel to EPA. While *Redacted US Steel Proposal to EPA Minntac 5–1–2018* remains available under Docket ID # EPA–R05–OAR–2010–0037–0110, it may also be found under its own Docket ID # EPA–R05–OAR–2010–0037–0109, available at *https://www.regulations.gov/document?D=EPA-R05-OAR-2010-0037-0109.*

U.S. Steel choose to co-fire with coal or biomass on one or more of its lines, the facility will remain subject to the 1.6 lbs NO_X/MMBtu limit regardless of fuel type.

Comment 13: Information in the docket indicates U.S. Steel suggested the facility-wide emission limit needs to be set at a level that includes approximately two months of historical emission data that were above the 1.5 lbs NO_x/MMBtu limit EPA offered during the negotiations. EPA provides no explanation for what caused the elevated levels. In fact, it's unclear whether EPA attempted to ascertain the answer to that question. These elevated levels were not seen at the other BART units. Without an explanation for this limited data, and whether such instances will occur during normal operations, it is unreasonable, arbitrary and capricious for EPA to set a limit that includes these operations, which has the effect of providing a ''safety margin.''

Response: It is unclear what information commenter is referencing. However, as discussed in greater detail in response to Comment 1, EPA evaluated and analyzed available hourly CEMS data showing emissions in lbs NO_X/MMBtu and fuel type. These data were available for the 2012–2017 time period. From this data set, EPA compiled the emission data available for each line after the installation of low NO_X burners. EPA then evaluated CEMS codes and process codes for each line to ensure that the limit would be based upon emission reduction capabilities during normal operations. EPA excluded hours when the process was idle, when a measurement error was recorded, or when process or CEMS codes indicated anything other than normal operation. Based upon that data, EPA proceeded to calculate achievable limits for the individual lines to use as a basis for the 1.6 lbs NO_X/MMBtu cross-line average limit proposed.

Comment 14: Based on its experience with the low NO_X burner at Minntac Line 6, EPA denied U.S. Steel's Petition for Reconsideration (at another facility), explaining that after installing Line 6, U.S. Steel was able to make significant design changes before installation at the next line planned for BART installation, Minntac Line 7.[16] EPA explained that the company identified the need for increased air flow and the need to modify the burner size or physical space to best accommodate the installation, and in doing so achieved the NO_X reductions at Line 7. EPA's current proposal fails to explain why U.S. Steel cannot make design changes to all the lines that will be capable of burning natural gas to achieve the NO_X emission limit when burning gas, when earlier it demonstrated it was able to do so at Lines 6 and 7.

Response: U.S. Steel's final burner reports for Lines 4 and 5, 6, and 7 provide detailed explanations of its efforts to optimize NO_X reduction at each line. As discussed in the reports, U.S. Steel has made physical and operational changes and tuned each low NO_X burner to ensure each can operate in a manner that reduces NO_X emissions while making pellets that meet quality specifications. Specifically, the September 2017 Line 4 final burner report highlights how U.S. Steel installed a blower to add additional combustion air to optimize stoichiometric ratios at Lines 4 and 5. Subsequent information provided by U.S. Steel discusses how U.S. Steel implemented a CEMS-based monitoring and process control program to monitor NO_X emissions at each line and allow for automated process control system adjustments to ensure the low NO_X burners at each line are operating efficiently.

Comment 15: One of EPA's purported reasons for providing U.S. Steel with the higher limit is to provide the company with ''additional flexibility.'' This rationale finds no basis in the CAA and is therefore not a permissible reason for revising the 2013 FIP determinations. Moreover, while EPA suggests that this flexibility is appropriate because of ''unique issues U.S. Steel faced in trying to comply with the individual limits in the 2013 FIP,'' EPA provides no explanation of what those issues are, and what options were explored, if any, to resolve those issues. EPA fails to provide an explanation for its reversal of opinion and fails to explain the basis for its decision.

Response: As explained in the proposal, U.S. Steel faced issues trying to comply with the limits in the 2013 FIP. As discussed in response to Comment 1, the emission limits initially promulgated under the 2013 FIP were based on the installation and optimization of low NO_X burners on Lines 6 and 7, and the limited CEMS data available at that time. Since promulgation of the 2013 FIP, our understanding of the emissions levels achievable through the use of low NO_X burner has changed. U.S. Steel has continued to collect CEMS data from Lines 6 and 7. U.S. Steel has also installed low NO_X burners on Lines 4 and 5, adjusted and optimized each of those burners to reduce NO_X, and collected CEMS data for each of the lines.

EPA's proposal to set an aggregate emission limit averaged across Minntac's five lines is permissible under the BART Guidelines. As discussed in the proposal and in response to Comments 1 and 18, the BART Guidelines provide that a source may be permitted to ''average'' emissions across a set of BART-eligible emission units within a fenceline, so long as the emission reductions from each pollutant controlled for BART would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute BART-eligible sources. See 40 CFR part 51, appendix Y, at V.

EPA based the 1.6 lbs NO_X/MMBtu cross-line average on the emission rates demonstrated by the CEMS data to be achievable through the use of low NO_X burners. The 1.6 lbs NO_X/MMBtu limit is the most stringent limit the facility can consistently meet while providing for operational flexibility with regard to fuel choice. As stated in the proposal, EPA is confident that allowing U.S. Steel to average NO_X emissions levels across Minntac Lines 3 through 7 will achieve NO_X emission reductions equal to the reductions that would have been obtained had EPA revised the individual limits for Minntac Lines 3 through 7 separately. The ''additional flexibility'' provided by this cross-line average is consistent with the BART Guidelines.

Comment 16: EPA does not disclose that the proposal is apparently the result of confidential settlement discussions. EPA's apparent reliance on confidential information not disclosed as a part of this proposal, contravenes the Act's requirements and does not allow the public to review and consider the changes proposed, and is particularly problematic in light of the history and level of pollution from these sources. EPA has not provided documentation of the reasons for the revisions in the form of publicly available information. Without the opportunity to review the information EPA relies on, the public is prohibited from critiquing the basis for EPA's action and cannot meaningfully participate in the comment process. EPA is suppressing ''meaningful comment by failure to disclose the basic data relied upon is akin to rejecting comment altogether.''

In sum, EPA's emission limitation proposal appears to be based on negotiations, rather than a technical analysis, since EPA did not consider the

[16] Commenter seems to be confusing the order of low-NO_X burner installation on Lines 6 and 7. Low NO_X burners were installed on Lines 6 and 7 in April 2011 and May 2010, respectively.

relevant statutory and regulatory factors in proposing the revisions and fails to provide a basis for most of its assertions. It is unlawful, arbitrary and capricious for EPA to assert it has authority to revise BART emission limitations without the factual and analytical support substantiating its decision.

Response: The revised emission limit is the result of a settlement agreement between EPA and U.S. Steel. On September 11, 2019, EPA published a notice of proposed settlement agreement in the **Federal Register** and provided the public an opportunity to comment on the proposed settlement agreement, in accordance with CAA section 113(g), 42 U.S.C. 7413(g). (84 FR 47945). EPA did not receive any adverse comments relating to the proposed settlement agreement. Contrary to the commenter's assertion, EPA did not rely on confidential information in determining the appropriate NO_X BART emission limits for Minntac. Rather, EPA relied upon CEMS data available in the docket.

As discussed in the response to Comment 1, the five-step BART analysis for Minntac in the August 15, 2012 proposed FIP (77 FR 49312–49313), established low NO_X burners as the basis for BART emission limits. That analysis and EPA's determination that BART is based upon the use of low NO_X main burners remains valid and EPA continues to rely on the BART analysis set forth in the August 15, 2012 proposal concerning the selection of low NO_X burners as the appropriate BART technology. However, since EPA promulgated the FIP limits, U.S. Steel has continued to operate low NO_X burners and to collect CEMS data on Lines 6 and 7. Since promulgation of the FIP, U.S. Steel has also installed low NO_X burners and collected CEMS data on Lines 4 and 5. Therefore, there are significantly more data available now from which to evaluate the emissions limits actually achievable through the use of low NO_X burners at Minntac than there were at the time the FIP was promulgated. As discussed in greater detail in response to Comments 1 and 6, it is this combined data set, which has been included in the docket, that provides the basis for the revision to the NO_X BART emission limit for Minntac.

Comment 17: The proposal lacks clear, well-documented comparisons between baseline emissions, the emission limitations from the 2013 final Taconite FIPs, and the new proposal. In particular, changes in annual emissions are not provided, and thus not easily compared by the public.

Response: Upon implementation of limits of 1.5 lbs NO_X/MMBtu and 1.2 lbs NO_X/MMBtu, the reductions estimated under the 2013 FIP for Minntac range from 5,426 tpy to 6,077 tpy. The estimated reductions under a revised Minntac limit of 1.6 lbs NO_X/MMBtu are 5,209 tpy. These data are included in the docket as ''Emission reduction estimates.''

Comment 18: EPA fails to explain why it now thinks it is reasonable to use U.S. Steel's averaging approach, which it earlier found was not defensible because it relies on the assumption that all furnaces will emit at their highest values. Relying on the assumption that all furnaces will emit at their highest values (and be burning natural gas 100 percent of the time) is yet another assumption that provides an additional unjustified ''safety margin.''

Response: Under the BART Guidelines, a source may be permitted to ''average'' emissions across a set of BART-eligible emission units within a fenceline, so long as the emission reductions from each pollutant controlled for BART would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute BART-eligible sources. See 40 CFR part 51, appendix Y, at V. As shown in Table 1 in response to Comment 1, averaging the individual limits across Lines 4 through 7 results in a combined emissions limit of 1.6 lbs NO_X/MMBtu averaged over 720 hours (30 days).

In determining the appropriate NO_X emission limit for Minntac, EPA analyzed CEMS data reflecting 720-hour rolling averages at the 95th and 99th percentiles as well as the highest 720-hour rolling average at each line. As noted in responses to Comments 1 and 2, while the 1.6 lbs NO_X/MMBtu limit for Minntac is reflective of natural gas emission data, EPA evaluated all available CEMS data for 2012–2017. Based on this CEMS data, the resulting cross-line average is 1.6 lbs NO_X/MMBtu averaged over 720 hours when the facility is burning natural gas, regardless of selection of statistical analyses at the 99th or 95th percentiles, or highest 720-hour average. As discussed in response to Comments 1 and 13, 1.6 lbs NO_X/MMBtu limit is the most stringent limit the facility can consistently meet while providing operational flexibility with regard to fuel choice, including the facility's ability to burn natural gas as opposed to co-firing. EPA did not add a safety margin to the limit as commenter suggests.

Comment 19: If EPA is already setting a 30-day rolling average limit, it is inappropriate to further use the 720-hour values. Introducing the hourly values provides additional variability in the limit. EPA provides no authority to justify this approach, which appears to have increased the BART limit.

Response: Operations at Minntac in a given 30-day period, or even a single day, may in some cases involve both operation with only natural gas and operation with at least some firing of solid fuels. To be able to evaluate emissions from all hours when different fuels were used within a 30-day period, rather than only the times when a line used solely natural gas or solely co-fired for 30 consecutive days, EPA evaluated emissions based on 720-hour averages. Note that operations are typically 24 hours per day and 720 is the number of hours in a 30-day period.

Comment 20: 42 U.S.C. 7410(l) prohibits the Administrator from approving a SIP/FIP revision if the revisions would interfere with the attainment and reasonable further progress requirements of the CAA, and ''any other applicable requirement.'' In addition to requiring BART, each state's regional haze SIP must also set goals, expressed in deciviews for each Class I area located within the state that will assure reasonable progress toward achieving natural visibility. Moreover, the state's haze SIP must establish reasonable progress goals that ensure visibility conditions steadily progress, providing for improvement in visibility on the most impaired days and ensure no degradation in visibility on the least impaired days over the period of the implementation plan. 40 CFR 51.308(d)(1). These goals are set after considering the anticipated reductions in visibility impairing pollution over the planning period of the SIP from anticipated BART controls and other Federal or state programs, as well as controls imposed on non-BART sources under the regional haze SIP to help achieve reasonable progress. EPA's proposal did not consider how relaxing the BART emission limits will impact the reasonable progress goals.

Response: Under section 110(l) of the Act, 42 U.S.C. 7410(l), the EPA Administrator may not approve a SIP or FIP revision ''if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of [the Act].'' In the proposed action, EPA proposed to find that the revisions to the FIP will comply with applicable regional haze program requirements and general implementation plan requirements such as enforceability.

On June 12, 2012 (77 FR 34801), EPA approved Minnesota's regional haze plan as satisfying the applicable requirements in 40 CFR 51.308, except

for BART emission limits for the taconite facilities. Among the regional haze plan elements approved was Minnesota's long-term strategy for making reasonable progress toward visibility goals. Minnesota's long-term strategy did not rely on the achievement of any particular degree of emission control from the taconite plants to achieve reasonable progress goals. Therefore, the revised NO_X limits for Minntac represent greater control than was assumed in Minnesota's approved long-term strategy SIP and does not interfere with the reasonable progress goals required by 40 CFR 51.308(d)(1). Thus, the proposed FIP revision would not interfere with any regional haze program requirements.

Comment 21: The CAA requires that EPA provide a public hearing when proposing a FIP. [42 U.S.C. 7607(d)(5)] EPA failed to comply with this legislative mandate, since its proposal neither provided information regarding a public hearing, nor asked the public if they were interested in a hearing.

Response: In response to this comment, EPA held a virtual public hearing on the proposed rule to provide interested persons an opportunity for the oral presentation of data, views, or arguments concerning the proposed rule. EPA also reopened the comment period on the proposed rule. Specifically, on September 29, 2020, EPA published a NPRM in the **Federal Register** announcing the virtual public hearing on the proposed rule to be held on October 14, 2020 and reopening the public comment period on the proposed rule. (85 FR 60942). EPA held the virtual public hearing on October 14, 2020. EPA accepted public comments on the proposed rule for 30 days following the virtual public hearing, and the public comment period closed on November 13, 2020. No individuals presented at the virtual public hearing and EPA did not receive any comments during the reopened comment period. The docket has been updated with a transcript of the virtual public hearing.[17]

Comment 22: The CAA and Regional Haze Rule grant the FLMs, regardless of whether a FLM manages a Class I area within or beyond the state, a special role in the review of regional haze implementation plans. There are obligations to consult on plan revisions under 40 CFR 51.308(i)(3) and EPA has not demonstrated it consulted with the Forest Service, the Fish and Wildlife Service and the National Park Service on the proposed FIP revision. Therefore, EPA has not met its obligations under the Act.

Response: In response to this comment, EPA contacted the FLMs to provide the FLMs an opportunity to consult on the proposed action. EPA reached out to representatives from the National Park Service, U.S. Forest Service, and U.S. Fish and Wildlife Service. Each representative indicated that they did not have any comments on the proposed rule. EPA has updated the docket to include the relevant communications with the FLMs.[18]

Comment 23: Should EPA wish to pursue this FIP revision, the agency must prepare the required information and analyses, including a comprehensive optimization study at Minntac, and then repropose its action.

Response: As noted in responses to Comments 1, 9 and 16, the five-step BART analysis for Minntac in the August 15, 2012 proposed FIP (77 FR 49312–49313), established low NO_X burners as the basis for BART emission limits. That analysis and EPA's determination that BART is based upon the use of low NO_X main burners remains valid and EPA continues to rely on the BART analysis set forth in the August 15, 2012 proposal concerning the selection of low NO_X burners as the appropriate BART technology. However, since EPA promulgated the FIP limits, U.S. Steel has continued to operate low NO_X burners and to collect CEMS data on Lines 6 and 7. Since promulgation of the FIP, U.S. Steel has also installed low NO_X burners and collected CEMS data on Lines 4 and 5. Therefore, there are significantly more data available now from which to evaluate the emissions limits actually achievable through the use of low NO_X burners at Minntac than there were at the time the FIP was promulgated. As discussed in greater detail in response to Comments 1 and 6, it is this combined data set, which has been included in the docket, that provides the basis for the revision to the NO_X BART emission limit for Minntac.

In addition, as described in greater detail in responses to Comments 9 and 14, U.S. Steel's final burner reports for Lines 4 and 5, 6, and 7 provide detailed explanations of its efforts to optimize NO_X reduction at each line. As discussed in the reports, U.S. Steel has made physical and operational changes and tuned each low NO_X burner to ensure each can operate in a manner that reduces NO_X emissions while making pellets that meet quality specifications. In each report, U.S. Steel discusses the process of optimizing the low NO_X burners and tuning each burner and ancillary equipment to achieve optimal stoichiometric air to fuel ratios. For each line, U.S. Steel determined achieving optimal air to fuel ratios requires monitoring the atomizing air and gas split between the core and annulus gas to reduce flame turbulence in order to create a tight flame shape at each burner. In addition, in some cases, U.S. Steel modified capacities of combustion fans and added blowers and annulus rings to improve thrust and air to fuel ratios—each of which served to minimize NO_X emissions as demonstrated by CEMS data.

This action is limited to revising the FIP emission limit for Minntac to reflect the level of NO_X control achievable for the source based on the use of low NO_X burners. Regarding commenter's assertion that EPA was required to prepare certain information and analysis and repropose this action, as noted above, at the time of our February 4, 2020 proposal, EPA already had the information and analyses necessary to determine the appropriate revised emission limit for Minntac. This information included CEMS data for Minntac Lines 4 through 7 provided by U.S. Steel and EPA's analysis of that information. In addition, U.S. Steel provided to EPA final burner reports detailing U.S. Steel's efforts to optimize the low NO_X burners on Minntac Lines 4 through 7.

As discussed in response to Comment 1, in the 2013 FIP, EPA determined that low NO_X burners reflect the appropriate level of BART control for Minntac. EPA's analysis and proposed determination that BART is based upon the use of low NO_X burners remains valid. (78 FR 8706). However, the emission limits established in the 2013 FIP were based on limited CEMS data. Since promulgation of the 2013 FIP, U.S. Steel has continued to collect CEMS data on Minntac Lines 6 and 7. U.S. Steel has also installed low NO_X burners on Lines 4 and 5 and has collected CEMS data reflecting the operation of low NO_X burners on these lines. To determine emission rates that would be consistently achievable at each line, EPA evaluated all available CEMS data for 2012–2017, which covered a wide range of different operating scenarios.

Comment 24: How is the increase in NO_X emissions at this source not affecting nonattainment areas in downwind states such as New York or

[17] Minnesota; Revision to Taconite Federal Implementation Plan; October 14, 2020 Public Hearing Transcript, Docket ID # EPA–R05–OAR–2010–0037–0117, *available at https://www.regulations.gov/document?D=EPA-R05-OAR-2010-0037-0117*.

[18] *See* emails from March 23, 2020 to June 30, 2020 included in the docket as ''3–23–2020 email from K. D'Agostino to D. Shepherd, T. Wickman, T. Allen,'' etc.

Connecticut? East coast states typically point to states like Minnesota as significantly contributing to their ozone problems under CAA 110(a)(2)(D). Is EPA at this point conclusively deciding that this increased FIP limit will not cause the state to violate CAA 110(a)(2)(D) for any of the relevant NAAQS like ozone PM or NO2? Did EPA adjust its photochemical modeling performed for good neighbor SIPs to account for this relaxation? EPA issued several memos detailing Minnesota's contributions before this change, what is the quantitative effect of increasing these emissions on Minnesota's contribution to downwind states? EPA must figure this out before modifying this FIP otherwise EPA is predetermining Minnesota's SIP under 110(a)(2)(D) and concluding the state has met its obligations.

Response: The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable ''infrastructure'' elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain ''good neighbor'' provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. The commenter does not specify which element of CAA section 110(a)(2)(D) it believes is implicated by this action. Though, in questioning the effect of the FIP revision on downwind nonattainment areas, the commenter may be referring to the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the applicable air quality standard in any other state.

EPA has previously taken action to approve good neighbor SIPs for several pollutants and the modifications being made to the FIP are not expected to contradict those approvals. On October 20, 2015 (80 FR 63436), EPA approved Minnesota's SIP as addressing the State's CAA section 110(a)(2)(D)(i)(I) obligations under the 2010 NO_2 NAAQS. The approval of Minnesota's 2010 NO_2 good neighbor SIP was based on low design values for Minnesota and surrounding states, with the highest neighboring state showing a design value of 49 parts per billion (ppb), less than half of the 100 ppb standard. This approval was based on monitoring data from 2011 to 2013. Therefore, the FIP, promulgated in 2013, but not immediately requiring reductions, would not have had an impact on that data set.

On October 10, 2018 (83 FR 50849), EPA approved Minnesota's SIP as addressing the State's CAA section 110(a)(2)(D)(i)(I) obligations under the 2012 $PM_{2.5}$ NAAQS. In the proposed SIP approval, EPA explained that Minnesota found, and EPA's review confirmed, that all areas in other states where Minnesota emissions had the potential to impact monitored $PM_{2.5}$ air quality, with the exception of one monitor in Allegheny County, Pennsylvania, were attaining the 2012 annual $PM_{2.5}$ NAAQS based on 2014–2016 data. (83 FR 39970, August 13, 2018). The emissions limits promulgated in the 2013 FIP were not yet in effect during this period, and thus the associated reductions did not impact the EPA's assessment of attainment. Minnesota further determined that its impact on air quality monitors in Pennsylvania was projected to be less than 1% of the 2012 annual $PM_{2.5}$ NAAQS, an insignificant contribution based on the air quality threshold that EPA had previously used to identify linkages between upwind states and downwind air quality problems under CAA section 110(a)(2)(D)(i)(I). Minnesota's determination was based on EPA's source apportionment modeling projecting upwind state contributions to downwind monitors using 2011 base case emissions, which was also conducted prior to the effectiveness of the emission limits promulgated in the 2013 FIP. The revised FIP limit at Minntac represents greater control than was assumed in Minnesota's and EPA's analysis supporting approval of the 2012 $PM_{2.5}$ good neighbor SIP.

To the extent EPA has not acted on a pending good neighbor SIP under CAA section 110(a)(2)(D)(i)(I), EPA is not in this action pre-determining its approvability. On October 1, 2018, the State of Minnesota submitted to EPA a SIP submittal addressing Minnesota's interstate transport requirements under CAA section 110(a)(2)(D)(i)(I) with respect to the 2015 ozone NAAQS. EPA has not yet taken action on Minnesota's October 1, 2018 SIP submittal. We will consider emissions from the state and whether the state is significantly contributing to or interfering with maintenance of the 2015 ozone NAAQS in any other state when we take action on the SIP.

III. Final Action

For the reasons stated in the proposed FIP revision, EPA is finalizing the revised BART emission limit and related requirements for the U.S. Steel Minntac facility as proposed.

IV. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget (OMB) because it is a rule of particular applicability and only affects one facility, U.S. Steel's Minntac taconite plant located in Mt. Iron, Minnesota.

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

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . . .'' 44 U.S.C. 3502(3)(A). Because the FIP applies to just one facility, the PRA does not apply. *See* 5 CFR 1320(c).

D. Regulatory Flexibility Act (RFA)

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA's action revises control requirements at one source. The Regional Haze FIP that EPA is promulgating for purposes of the regional haze program consists of imposing Federal control requirements to meet the BART requirement for NO_X emissions on specific units at one source in Minnesota. The net result of the FIP action is that EPA is finalizing emission controls on the indurating furnaces at one taconite facilities and this source is not owned by small entities, and therefore is not a small entity.

E. Unfunded Mandates Reform Act (UMRA)

EPA has determined that this rule does not contain a Federal mandate as

described in UMRA, 2 U.S.C. 1531–1538, that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any one year. In addition, this rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action 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.

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

This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. However, EPA did discuss this action in conference calls with the Minnesota Tribes.

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

EPA interprets E.O. 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This action addresses regional haze and visibility protection. Further, because this amendment to the current regulation will require controls that will cost an amount equal to or less than the cost of controls required under the current regulation, it is not an economically significant regulatory action. However, to the extent this rule will limit emissions of NO_X, SO_2, and PM, the rule will have a beneficial effect on children's health by reducing air pollution.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

VCS are inapplicable to this action because application of those requirements would be inconsistent with the CAA.

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

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

N. Judicial Review

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 May 3, 2021. Filing a petition for reconsideration by the 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

This document of the Environmental Protection Agency was signed on January 11, 2021, by Andrew Wheeler, Administrator, pursuant to a settlement agreement between EPA and U.S. Steel that required the final rule to be signed no later than January 20, 2021. That document with the original signature and date is maintained by EPA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned EPA Official re-signs the document for publication, as an official document of the Environmental Protection Agency. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Jane Nishida,

Acting Administrator.

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 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 § 52.1235 revise paragraph (b)(1)(iii*)* to read as follows:

§ 52.1235 Regional haze.

* * * * *

(b)(1) * * *

(iii) *United States Steel Corporation, Minntac:* An aggregate emission limit of 1.6 lbs NO_X/MMBtu, based on a 30-day rolling average, shall apply to the combined NO_X emissions from the five indurating furnaces: Line 3 (EU225), Line 4 (EU261), Line 5 (EU282), Line 6 (EU315), and Line 7 (EU334). To determine the aggregate emission rate, the combined NO_X emissions from lines 3, 4, 5, 6 and 7 shall be divided by the total heat input to the five lines (in MMBTU) during every rolling 30-day period commencing either upon notification of a starting date by United States Steel Corporation, Minntac, or with the 30-day period from September 1, 2019 to September 30, 2019, whichever occurs first. The aggregate emission rate shall subsequently be determined on each day, 30 days after the starting date contained in such

notification or September 30, 2019, whichever occurs first.

* * * * *

[FR Doc. 2021–04108 Filed 3–1–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2018–0732; FRL–10020–70–Region 5]

Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Southwest Indiana Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Southwest Indiana nonattainment area, which consists of a portion of Daviess County and a portion of Pike County (Veale Township in Daviess County and Washington Township in Pike County), to attainment for the 2010 primary, health-based 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). EPA is also approving Indiana's maintenance plan for the Southwest Indiana SO_2 nonattainment area. Indiana submitted the request for approval of the Southwest Indiana nonattainment area's redesignation and maintenance plan on October 24, 2018, and supplemental information on August 25, 2020. EPA has previously approved Indiana's attainment plan for the Southwest Indiana area.

DATES: This final rule is effective on April 30, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0732. 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 and facility closures due to COVID–19. We recommend that you telephone Abigail Teener, Environmental Engineer, at (312) 353–7314 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7314, *teener.abigail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On October 29, 2020, EPA proposed to approve the redesignation of the Southwest Indiana SO_2 nonattainment area to attainment of the 2010 primary, health-based 1-hour SO_2 NAAQS and to approve Indiana's maintenance plan for the nonattainment area (85 FR 68533). An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on November 30, 2020. EPA received no comments on the proposal.

II. Final Action

In accordance with Indiana's October 24, 2018 request and August 25, 2020 supplemental letter, EPA is redesignating the Southwest Indiana nonattainment area from nonattainment to attainment of the 2010 SO_2 NAAQS. EPA finds that Indiana has demonstrated that the area is attaining the 2010 SO_2 NAAQS and that the improvement in air quality is due to permanent and enforceable SO_2 emission reductions in the area. EPA is also approving Indiana's maintenance plan, which is designed to ensure that the area will continue to maintain the SO_2 NAAQS.

III. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 it is not a significant regulatory action 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 May 3, 2021. Filing a petition for reconsideration by the 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 22, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 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 § 52.770, the table in paragraph (e) is amended by adding an entry for ''Southwest Indiana 2010 Sulfur Dioxide (SO_2) Maintenance Plan'' following the entry ''Southwest Indiana 2010 Sulfur Dioxide (SO_2) Attainment Plan'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * * * * * *			
Southwest Indiana Sulfur Dioxide (SO_2) Maintenance Plan.	10/24/2018, 8/25/2020	3/2/2021, [INSERT **FEDERAL REGISTER** CITATION].	
* * * * * * *			

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.315 is amended in the table entitled ''Indiana—2010 Sulfur Dioxide NAAQS [Primary]'' by revising the entry for ''Southwest Indiana, IN'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area [1]	Designation	
	Date [2]	Type
* * * * * * *		
Southwest Indiana, IN Daviess County (part) Veale Township Pike County (part) Washington Township	4/30/2021	Attainment.
* * * * * * *		

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is April 9, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2021–04195 Filed 3–1–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2020–0315; FRL–10019–25–Region 6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas, Louisiana, New Mexico, and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received CAA section 111(d)/129 negative declarations from Arkansas, Louisiana, New Mexico, and Albuquerque-Bernalillo County, New Mexico, for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. These negative declarations certify that HMIWI subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictions of Arkansas, Louisiana, New Mexico, and Albuquerque-Bernalillo County. The EPA is accepting the negative declarations and amending the agency's regulations in accordance with the requirements of the CAA.

DATES: This rule is effective on April 1, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0315. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our July 10, 2020, proposal (85 FR 41484). In that document we proposed to accept the HMIWI negative declarations from the Arkansas Department of Environmental Quality (ADEQ), Louisiana Department of Environmental Quality (LDEQ), Oklahoma Department of Environmental Quality (ODEQ), New Mexico Environment Department (NMED), and City of Albuquerque Environmental Health Department (AEHD), and to amend the Code of Federal Regulations (CFR) in accordance with the requirements of the CAA. In this rulemaking, we are only taking final action on the HMIWI negative declaration letters from Arkansas, Louisiana, New Mexico, and Albuquerque-Bernalillo County, New Mexico, and amending the CFR accordingly. We will take final action on the HMIWI negative declaration submitted by ODEQ for Oklahoma in a future, separate rulemaking.

II. Response to Comments

We received two comments on our proposal. We have determined that one comment has no relevance to the subject of this rulemaking and no further response is required. The other comment recommended that a state plan with the more stringent controls and results in the cleanest air should be adopted. As explained in our proposal, the negative declarations received reflect the absence of any sources subject to the standards of performance in the HMIWI Emission Guidelines, codified at 40 CFR part 60, subpart Ce, and therefore a plan is not required. If any sources within the stated jurisdictions are later identified as subject to the requirements of 40 CFR part 60, subpart Ce, then such sources would be subject to the federal plan and the associated compliance schedule, unless and until the EPA approves a state plan for those sources.

III. Final Action

The EPA is amending 40 CFR part 62 to reflect receipt of the negative declaration letters from ADEQ, LDEQ, NMED and AEHD certifying that there are no existing HMIWI subject to 40 CFR part 60, subpart Ce, in their respective jurisdictions in accordance with 40 CFR 60.23(b), 40 CFR 62.06, and sections 111(d) and 129 of the CAA. If a designated facility (*i.e.,* existing HMIWI) is later found within the aforementioned jurisdictions after publication of a final action, then the overlooked facility will become subject to the requirements of the federal plan for that designated facility, including the compliance schedule. The federal plan will no longer apply if we subsequently receive and approve the section 111(d)/129 plan from the jurisdiction with the overlooked facility.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Ce; and 40 CFR part 62, subpart A. With regard to negative declarations for designated facilities received by the EPA from states, the EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. 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);
- 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule also does not have Tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 5, 2021.

David Gray,

Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart E—Arkansas

■ 2. Add an undesignated center heading following § 62.867 to read as follows:

Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators

■ 3. Add 62.868 to read as follows:

§ 62.868 Identification of plan—negative declaration.

Letter from the Arkansas Department of Environmental Quality dated May 21, 2012, certifying that there are no known existing hospital/medical/infectious waste incinerator (HMIWI) units subject to 40 CFR part 60, subpart Ce, within its jurisdiction.

Subpart T—Louisiana

§ 62.4620 [Amended]

■ 4. Amend § 62.4620 by removing and reserving paragraphs (b)(5) and (c)(6).

■ 5. Revise the undesignated center heading above § 62.4633 to read as follows:

Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators

■ 6. Revise § 62.4633 to read as follows:

§ 62.4633 Identification of plan—negative declaration.

Letter from the Louisiana Department of Environmental Quality dated June 25, 2012, certifying that there are no known existing hospital/medical/infectious waste incinerator (HMIWI) units subject to 40 CFR part 60, subpart Ce, within its jurisdiction.

■ 7. Remove the undesignated center heading above § 62.4634.

§ 62.4634 [Removed]

■ 8. Remove § 62.4634.

Subpart GG—New Mexico

■ 9. Revise § 62.7870 to read as follows:

§ 62.7870 Identification of plan—negative declarations.

Letters from the New Mexico Environment Department and the City of Albuquerque Environmental Health Department dated February 11, 2014, and February 4, 2014, respectively, certifying that there are no existing hospital/medical/infectious waste incinerator (HMIWI) units subject to 40 CFR part 60, subpart Ce, within their respective jurisdictions in the State of New Mexico.

[FR Doc. 2021–02893 Filed 3–1–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2020–0291; FRL 10018–06–Region 3]

Virginia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia's Underground Storage Tank (UST) program submitted by the Commonwealth of Virginia (Virginia or State). This action also codifies EPA's approval of Virginia's state program and incorporates by reference (IBR) those provisions of Virginia's regulations and statutes that EPA has determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective May 3, 2021, unless EPA receives significant negative comments opposing this action by April 1, 2021. If EPA receives significant negative comments opposing this action, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of May 3, 2021, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: uybarreta.thomas@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R03–UST–2020–0291. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The federal website, *https://www.regulations.gov,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information might not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814–2953, *uybarreta.thomas@epa.gov,* RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Virginia's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

Section 9004 of RCRA authorizes EPA to approve state underground storage tank (UST) programs to operate in lieu of the federal UST program. EPA may approve a state program if the state demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the state program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the state program is ''no less stringent'' than the federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as Virginia that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling federal or state statutory or regulatory authority is changed and EPA determines a revision is required. In 2015, EPA revised the federal UST regulations and determined that states must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On February 11, 2019, in accordance with 40 CFR 281.51(a), Virginia submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). Virginia's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations. As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter requesting program approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of EPA and the implementing agency; an Attorney General's statement in accordance with 40 CFR 281.24 certifying to applicable state authorities; and copies of all relevant state statutes and regulations. EPA has reviewed the State Application and determined that the revisions to Virginia's UST program are no less stringent than the corresponding federal requirements in subpart C of 40 CFR part 281, and that the Virginia program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants Virginia final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this preamble.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Virginia, and they are not changed by this action. This action merely approves the existing State regulations as meeting the federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrently with a proposed rulemaking because EPA views this as a noncontroversial action and anticipates no significant negative comment. EPA is providing an opportunity for public comment now.

E. What happens if EPA receives comments that oppose this action?

Along with this direct final rule, EPA is publishing a separate document in the ''Proposed Rules'' Section of this **Federal Register** that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives significant negative comments that oppose this approval, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Virginia previously been approved?

On September 28, 1998, the EPA finalized a rule approving Virginia's UST program, effective October 28, 1998 (63 FR 51528), to operate in lieu of the federal program. On June 15, 2004, effective August 16, 2004 (69 FR 33312), EPA codified the approved Virginia program, incorporating by reference the State's statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes is EPA approving with this action?

On February 11, 2019, in accordance with 40 CFR 281.51(a), Virginia submitted a complete application for final approval of its UST program revisions adopted on September 4, 2017, effective January 1, 2018. EPA has reviewed Virginia's UST program requirements and determined that such requirements are no less stringent than the federal regulations and that the criteria set forth in 40 CFR part 281 subpart C are met. EPA now makes an immediate final decision, subject to receipt of any significant negative written comments that oppose this action, that Virginia's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Virginia final

approval for the following program changes:

Required Federal element	Implementing state authority
40 CFR 281.30, New UST Systems and Notification	9VAC25–580–20, –30, –50.1 to .5, & .7, –70, –120(1)(a), –380, –390.
40 CFR 281.31, Upgrading Existing UST Systems	9VAC25–580–20, –60, –380, –390.
40 CFR 281.32, General Operating Requirements	9VAC25–580–20, –60, –80, –82, –85, –90, –100, –110, –120, –180.
40 CFR 281.33, Release Detection	9VAC25–580–20, –50, –85, –130 to –170, –380, –390.
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	9VAC25–580–20, –80B, –190, –200 to –220.
40 CFR 281.35, Release Response and Corrective Action	9VAC25–580–20, –230 to –280, –300.
40 CFR 281.36, Out-of-service Systems and Closure	9VAC25–580–20, –310 to –350, –390.
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum.	9VAC25–590–40, –50 to –150, –160, –170, –200, –210, –250, –260.
40 CFR 281.38, Lender Liability	9VAC25–590–240, –260.
40 CFR 281.39, Operator Training	9VAC25–580–20, –125.

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. Virginia's State Water Control Board has broad statutory and regulatory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders, as implemented by the Virginia Department of Environmental Quality (VADEQ). The statutory authority is found in the Code of Virginia in the following titles: Title 2.2, Subtitle I, Chapter 5: Department of Law, Article 1: General Provisions, section 2.2–507; Title 2.2, Subtitle II, Chapter 40: Administrative Process Act; Title 2.2, Subtitle II, Chapter 48: Virginia Debt Collection Act; Title 10.1, Subtitle II, Chapter 11.1: Department of Environmental Quality, Article 1: General Provisions, sections 10.1–1182, –1186, –1186.3, –1186.4; Title 36, Chapter 6: Uniform Statewide Building Code (USBC), sections 36–97 to –119.1, in particular, sections 36–97, –98.1, –99.6; Title 42.1, Chapter 7: Virginia Public Records Act; and Title 62.1, Chapter 3.1: State Water Control Law, in the following articles: Article 2: Control Board Generally, sections 62.1–44.13, .15, Article 5: Enforcement and Appeal Procedure, sections 62.1–44.20, .21, .23, Article 6: Offenses and Penalties, sections 62.1–44.31, .32, Article 9: Storage Tanks, sections 62.1–44.34:8 to :9, and Article 10: Petroleum Storage Tank Fund, sections 62.1–44.34:10 to :13. The regulatory authority is found in the Virginia Administrative Code at Title 9, Agency 25: State Water Control Board, Chapter 580, 9VAC25–580 *et seq.* and Chapter 590, 9VAC25–590 *et seq.,* and the Virginia Uniform Statewide Building Code, Part I, Virginia Construction Code (VCC), Chapter 1, Sections 101.2, 102.3.10, 103, 108.1, 414.6.2 and Chapter 2.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following Virginia requirements are considered ''broader in scope'' than the federal program. In accordance with 40 CFR 281.12(a)(3)(ii), this additional coverage is not part of the federally-approved program and is not federally enforceable.

Virginia's statutory and regulatory definitions of a regulated substance under Va. Code Sec. 62.1–44.34:8 and :10 and 9VAC25–580–10, include an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare or the environment. The federal definition of regulated substance, which is found at 40 CFR 280.12, includes only hazardous substances and petroleum. To the extent that Virginia regulates a larger tank community with respect to regulated substance tanks which are not specifically exempted, such a requirement is ''broader in scope'' than the federal program.

Under Va. Code Sec. 62.1–44.34:13, Virginia levies a fee on certain types of fuels sold in the State to maintain the Petroleum Storage Tank Fund. Such fee requirements are ''broader in scope'' than the federal program.

Virginia requires owners and operators of UST systems undergoing installation, upgrade, repair and closure to obtain a permit from local building officials (for state-owned facilities, the Department of General Services serves as the building official) and an inspection in accordance with the USBC and VCC when conducting such activities. 9VAC25–580–40, –50, –60, –110, –160, –170, –310, –320, –380, –390. The USBC permitting and inspection requirements are ''broader in scope'' than the federal program.

I. How does this action affect Indian country (18 U.S.C. 1151) in Virginia?

Virginia is not authorized to carry out its program in Indian Country (18 U.S.C. 1151) within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country. See 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the Code of Federal Regulations (CFR). Section 9004(b) of RCRA, as amended, allows EPA to approve state UST programs to operate in lieu of the federal program. EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Virginia's UST program?

EPA incorporated by reference Virginia's UST program, approved effective October 28, 1998, on June 15, 2004 (69 FR 33312, June 15, 2004). In this document, EPA is revising 40 CFR 282.96 to include the approved revisions.

C. What codification decisions has EPA made in this rule?

Incorporation by reference: In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Virginia statutes and regulations described in the amendments to 40 CFR part 282 set forth below. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 3 office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Virginia's approved UST program. The codification reflects the State program that will be in effect at the time EPA's approved revisions to the Virginia UST program addressed in this direct final rule become final. If, however, EPA receives any significant negative comment opposing the proposed rulemaking then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. The document incorporates by reference Virginia's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally-enforceable program. By codifying the approved Virginia program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Virginia program.

EPA is incorporating by reference the Virginia approved UST program in 40 CFR 282.96. Section 282.96(d)(1)(i)(A) and (B) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.96 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of Virginia's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. If EPA determines it will take such actions in Virginia, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the State's authorized analogs to these provisions. Therefore, EPA is not incorporating by reference such approved Virginia procedural and enforcement authorities. Section 282.96(d)(1)(ii) of 40 CFR lists those approved Virginia authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Such provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not a part of the federally-approved program. As a result, State provisions that are ''broader in scope'' than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.96(d)(1)(iii) lists for reference and clarity the Virginia statutory and regulatory provisions that are ''broader in scope'' than the federal program and which are not, therefore, part of the approved program being codified in this action. Provisions that are ''broader in scope'' cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to Virginia's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

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

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Virginia's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect

Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules that are no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). However, this action will be effective May 3, 2021 because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control, Water supply.

Diana Esher,

Acting Regional Administrator, EPA Region 3.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.96 to read as follows:

§ 282.96 Virginia State-Administered Program.

(a) The Commonwealth of Virginia is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Virginia Department Environmental Quality, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281 of this chapter. EPA approved the Virginia underground storage tank program on September 28, 1998, and approval was effective on October 28, 1998. A subsequent program revision application was approved by EPA and became effective on May 3, 2021.

(b) Virginia has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Virginia must revise its approved program to adopt new changes to the federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Virginia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Virginia has final approval for the following elements of its program application originally submitted to EPA and approved on September 28, 1998 and effective October 28, 1998, and the program revision application approved by EPA, effective on May 3, 2021.

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1

CFR part 51. You may obtain copies of the Virginia regulations and statutes that are incorporated by reference in this paragraph from the Office of Spill Response and Remediation, Virginia DEQ, 1111 East Main Street, Suite 1400, Richmond, VA 23219; Phone number: 804–698–4010; *tank@deq.virginia.gov*. You may inspect all approved material at the EPA Region 3 office, 1650 Arch Street, Philadelphia, PA 19103–2029 (Phone number 215–814–2953) or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email *fedreg.legal@nara.gov* or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

(A) Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, April 2004.

(B) Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, June 2018.

(ii) *Legal basis.* EPA evaluated the following statutes and regulations, which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace federal authorities:

(A) The statutory provisions include:

(*1*) Code of Virginia, Title 2.2, Subtitle I, Chapter 5: Department of Law, Article 1: General Provisions, Section 2.2–507.

(*2*) Code of Virginia, Title 2.2, Subtitle II, Chapter 40: Administrative Process Act, Sections 2.2–4000 to –4031, insofar as the provisions and procedures serve to implement the underground storage tank program.

(*3*) Code of Virginia, Title 2.2, Subtitle II, Chapter 48: Virginia Debt Collection Act, Sections 2.2–4800 to –4809, insofar as the provisions and procedures serve to implement the underground storage tank program.

(*4*) Code of Virginia, Title 10.1, Subtitle II, Chapter 11.1: Department of Environmental Quality, Article 1: General Provisions, Sections 10.1–1182, –1186, –1186.3, –1186.4.

(*5*) Code of Virginia, Title 36, Chapter 6: Uniform Statewide Building Code, Sections 36–97 to –119.1, especially sections 36–97, –98.1, –99.6.

(*6*) Code of Virginia, Title 42.1, Chapter 7: Virginia Public Records Act, Sections 42.1–76 to –90.1, insofar as the provisions and procedures serve to implement the underground storage tank program.

(*7*) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 2: Control Board Generally, Sections 62.1–44.13, .15; Article 5: Enforcement and Appeal Procedure, Sections 62.1–44.20, .21, .23; Article 6: Offenses and Penalties, Sections 62.1–44.31, .32.

(B) The regulatory provisions include:

(*1*) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks: Technical Standards and Corrective Action Requirements, Part I Definitions, Applicability, and Installation Requirements for Partially Excluded Systems, 9VAC25–580–10 Definitions for ''Delivery prohibition'' and ''Delivery prohibition tag;'' Part IX Delivery Prohibition, 9VAC25–580–370 Requirements for delivery prohibition.

(*2*) 2015 Virginia Uniform Statewide Building Code, Part I, Virginia Construction Code, Sections 101.2, 102.3.10, 103, 108.1, 414.6.2, Chapter 2.

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are ''broader in scope'' than the federal program, are not part of the approved program, and are not incorporated by reference herein. These provisions are not federally enforceable:

(A) The statutory provisions include:

(*1*) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 9: Storage Tanks Section 62.1–44.34:8 Definitions, ''Regulated substance'' insofar as the term includes substances not regulated under the federal program.

(*2*) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 10: Petroleum Storage Tank Fund.

Section 62.1–44.34:10 Definitions, ''Regulated substance'' insofar as the term includes substances not regulated under the federal program

Section 62.1–44.34:13 Levy of fee for Fund maintenance

(B) The regulatory provisions include Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks: Technical Standards and Corrective Action Requirements.

(*1*) Section 9VAC25–580–10 Definitions, ''Regulated substance'' insofar as the term includes substances not regulated under the federal program

(*2*) Section 9VAC25–580–40 Permitting and inspection requirements for all UST systems, USBC permitting and inspection requirements

(*3*) Section 9VAC25–580–50 Performance standards for new UST systems, subdivision 4.b. USBC permitting and inspection requirements, subdivision 5. USBC permitting requirement to demonstrate compliance with subdivision 4. of 9VAC25–580–50

(*4*) Section 9VAC25–580–60 Upgrading of existing UST systems, USBC permitting and inspection requirements

(*5*) Section 9VAC25–580–110 Repairs allowed, USBC permitting and inspection requirements

(*6*) Section 9VAC25–580–160 Methods of release detection for tanks, USBC permitting and inspection requirements

(*7*) Section 9VAC25–580–170 Methods of release detection for piping, USBC permitting and inspection requirements

(*8*) Section 9VAC25–580–310 Temporary closure, USBC permitting and inspection requirements

(*9*) Section 9VAC25–580–320 Permanent closure and changes-in-service, USBC permitting and inspection requirements

(*10*) Section 9VAC25–580–380 General Requirements, USBC permitting and inspection requirements

(*11*) Section 9VAC25–580–390 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems, USBC permitting and inspection requirements

(2) *Statement of legal authority.* ''Attorney General's Statement,'' signed by the Assistant Attorney General, via authority delegated by the Attorney General, on November 20, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Virginia UST Program Demonstration of Adequate Enforcement Procedures'' submitted as part of the program revision application for approval on February 11, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the program revision application on February 11, 2019, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 3 and the Virginia Department of Environmental Quality, signed by the EPA Regional Administrator on November 26, 2018,

though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to part 282 is amended by revising the entry for Virginia to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Virginia

(a) The statutory provisions include:

(1) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law.

Article 9: Storage Tanks

Section 62.1–44.34:8 Definitions, except ''Regulated substance'' insofar as the term includes substances not regulated under the federal program

Section 62.1–44.34:9 Powers and duties of Board

Article 10: Petroleum Storage Tank Fund

Section 62.1–44.34:10 Definitions, except ''Regulated substance'' insofar as the term includes substances not regulated under the federal program

Section 62.1–44.34:11 Virginia Petroleum Storage Tank Fund

Section 62.1–44.34:12 Financial Responsibility

(b) The regulatory provisions include:

(1) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks: Technical Standards and Corrective Action Requirements.

Part I: Definitions, Applicability, and Installation Requirements for Partially Excluded UST Systems

9 VAC 25–580–10 Definitions, except the terms ''Delivery prohibition,'' ''Delivery prohibition tag,'' and ''Regulated substance'' insofar as the term includes substances not regulated under the federal program

9 VAC 25–580–20 Applicability

9 VAC 25–580–30 Installation requirements for partially excluded UST systems

Part II: UST Systems: Design, Construction, Installation, and Notification

9 VAC 25–580–50 Performance standards for new UST systems, except USBC permitting and inspection requirements at –50.4 and –50.5

9 VAC 25–580–60 Upgrading of existing UST systems, except USBC permitting and inspection requirements

9 VAC 25–580–70 Notification requirements

Part III: General Operating Requirements

9 VAC 25–580–80 Spill and overfill control

9 VAC 25–580–82 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment

9 VAC 25–580–85 Periodic operation and maintenance walkthrough inspections

9 VAC 25–580–90 Operation and maintenance of corrosion protection

9 VAC 25–580–100 Compatibility

9 VAC 25–580–110 Repairs allowed, except USBC permitting and inspection requirements

9 VAC 25–580–120 Reporting and recordkeeping

9 VAC 25–580–125 Operator training

Part IV: Release Detection

9 VAC 25–580–130 General requirements for all petroleum and hazardous substance UST systems

9 VAC 25–580–140 Requirements for petroleum UST systems

9 VAC 25–580–150 Requirements for hazardous substance UST systems

9 VAC 25–580–160 Methods of release detection for tanks, except USBC permitting and inspection requirements

9 VAC 25–580–170 Methods of release detection for piping, except USBC permitting and inspection requirements

9 VAC 25–580–180 Release detection recordkeeping

Part V: Release Reporting, Investigation, and Confirmation

9 VAC 25–580–190 Reporting of suspected releases

9 VAC 25–580–200 Investigation due to off-site impacts

9 VAC25–580–210 Release investigation and confirmation steps

9 VAC 25–580–220 Reporting and cleanup of spills and overfills

Part VI: Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

9 VAC 25–580–230 General

9 VAC 25–580–240 Initial response

9 VAC 25–580–250 Initial abatement measures and site check

9 VAC 25–580–260 Site characterization

9 VAC 25–580–270 Free product removal

9 VAC 25–580–280 Corrective action plan

9 VAC 25–580–300 Public participation

Part VII: Out-of-Service UST Systems and Closure

9 VAC 25–580–310 Temporary closure, except USBC permitting and inspection requirements

9 VAC 25–580–320 Permanent closure and changes-in-service, except USBC permitting and inspection requirements

9 VAC 25–580–330 Assessing the site at closure or change-in-service

9 VAC 25–580–340 Applicability to previously closed UST systems

9 VAC 25–580–350 Closure records

Part VIII: Delegation

9 VAC 25–580–360 Delegation of authority

Part X: UST Systems With Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

9 VAC 25–580–380 General requirements, except USBC permitting and inspection requirements

9 VAC 25–580–390 Additions, exceptions, and alternatives for UST systems with field constructed tanks and airport hydrant systems, except USBC permitting and inspection requirements

Forms (9VAC25–580)

(2) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 590: Petroleum Underground Storage Tank Financial Responsibility Requirements

9 VAC 25–590–10 Definitions

9 VAC 25–590–15 Applicability of incorporated references based on the dates that they became effective

9 VAC 25–590–20 Applicability

9 VAC 25–590–30 Compliance dates

9 VAC 25–590–40 Amount and scope of financial responsibility requirement

9 VAC 25–590–50 Allowable mechanisms and combinations of mechanisms

9 VAC 25–590–60 Financial test of self-insurance

9 VAC 25–590–70 Guarantee

9 VAC 25–590–80 Insurance and group self-insurance pool coverage

9 VAC 25–590–90 Surety bond

9 VAC 25–590–100 Letter of credit

9 VAC 25–590–105 Certificate of deposit

9 VAC 25–590–110 Trust fund

9 VAC 25–590–130 Substitution of financial assurance mechanisms by owner or operator

9 VAC 25–590–140 Cancellation or nonrenewal by a provider of financial assurance

9 VAC 25–590–150 Reporting by owner or operator

9 VAC 25–590–160 Recordkeeping

9 VAC 25–590–170 Drawing on financial assurance mechanism

9 VAC 25–590–180 Release from the requirements

9 VAC 25–590–190 Bankruptcy or other incapacity of owner, operator or provider of financial assurance

9 VAC 25–590–200 Replenishment of guarantees, letters of credit, certificates of deposit, or surety bonds

9 VAC 25–590–210 Virginia Petroleum Storage Tank Fund

9 VAC 25–590–220 Notices to the State Water Control Board

9 VAC 25–590–230 Delegation of authority

9 VAC 25–590–240 Lender liability

9 VAC 25–590–250 Local government financial responsibility demonstration

9 VAC 25–590–260 Modifications to language incorporated by reference

Appendix I: Letter from Chief Financial Officer

Appendix II: Guarantee

Appendix III: Endorsement

Appendix IV: Certificate of Insurance

Appendix V: Payment and Performance Bond

Appendix VI: Irrevocable Standby Letter of Credit

Appendix VII: Trust Agreement

Appendix VIII: Certification of Acknowledgement

Appendix IX: Certification of Financial Responsibility

Appendix X: Certification of a Valid Claim

Appendix XI: Letter from Chief Financial Officer (Short Form)

Appendix XII: Certificate of Group Self-Insurance Pool Membership

Appendix XIII: Assignment of Certificate of Deposit

* * * * *

[FR Doc. 2021–03778 Filed 3–1–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2021–0003; Internal Agency Docket No. FEMA–8669]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur. Information identifying the current participation status of a community can be obtained from FEMA's CSB available at *www.fema.gov/flood-insurance/work-with-nfip/community-status-book.* Please note that per Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program, notices such as this one for scheduled suspension will no longer be published in the **Federal Register** as of June 2021 but will be available at National Flood Insurance Community Status and Public Notification | *FEMA.gov.* Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

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

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674–1087. Details regarding updated publication requirements of community eligibility status information under the NFIP can be found on the CSB section at *www.fema.gov.*

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with NFIP regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date listed in the third column. As of that date, flood insurance will no longer be available in the community. FEMA recognizes communities may adopt and submit the required documentation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. Their current NFIP participation status can be verified at anytime on the CSB section at *fema.gov.*

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region 4				
Florida:				
Gulf County, Unincorporated Areas	120098	August 7, 1975, Emerg; June 15, 1983, Reg; March 9, 2021, Susp.	March 9, 2021 ..	March 9, 2021.
Port St. Joe, City of, Gulf County	120099	September 11, 1970, Emerg; June 15, 1983, Reg; March 9, 2021, Susp.	.....do	Do.
Region 5				
Minnesota:				
Plummer, City of, Red Lake County	270390	September 15, 1975, Emerg; June 22, 1984, Reg; March 9, 2021, Susp.	.....do	Do.
Red Lake County, Unincorporated Areas.	270387	April 5, 1974, Emerg; July 2, 1987, Reg; March 9, 2021, Susp.	.....do	Do.
Ohio:				
Amherst, City of, Lorain County	390347	April 14, 1975, Emerg; August 1, 1980, Reg; March 9, 2021, Susp.	.....do	Do.
Avon Lake, City of, Lorain County	390602	February 11, 1974, Emerg; November 2, 1977, Reg; March 9, 2021, Susp.	.....do	Do.
Defiance, City of, Defiance County	390144	June 9, 1975, Emerg; March 4, 1985, Reg; March 9, 2021, Susp.	.....do	Do.
Lorain, City of, Lorain County	390351	June 11, 1973, Emerg; August 15, 1978, Reg; March 9, 2021, Susp.	.....do	Do.
Lorain County, Unincorporated Areas	390346	N/A, Emerg; October 14, 1991, Reg; March 9, 2021, Susp.	.....do	Do.
Sheffield, Village of, Lorain County	390354	July 3, 1975, Emerg; June 18, 1980, Reg; March 9, 2021, Susp.	.....do	Do.
Sheffield Lake, City of, Lorain County	390355	May 1, 1973, Emerg; March 1, 1978, Reg; March 9, 2021, Susp.	.....do	Do.
Vermilion, City of, Erie and Lorain Counties.	395374	May 8, 1970, Emerg; December 31, 1970, Reg; March 9, 2021, Susp.	.....do	Do.
Region 7				
Missouri:				
St. Charles County, Unincorporated Areas.	290315	August 6, 1971, Emerg; September 15, 1978, Reg; March 9, 2021, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Eric J. Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

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Proposed Rules

Federal Register
Vol. 86, No. 39
Tuesday, March 2, 2021

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 800

[Doc. No. AMS–FGIS–20–0001]

RIN 0581–AD94

Fees for Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies, Miscellaneous Fees for Other Services, and Removal of Specific Fee References

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) invites comments on a proposal to implement a standardized formula model for calculating Federal Grain Inspection Service (FGIS) supervision fees. The proposed change would enable FGIS to adjust supervision fees annually in order to maintain an appropriate operating reserve as required by the United States Grain Standards Act (USGSA). As with other AMS fee-based programs, AMS would publish annual FGIS fee updates in the **Federal Register** and post updated fee schedules on its website. The proposed rule would also eliminate or revise certain registration and duplication fees charged by FGIS.

DATES: Comments must be received on or before April 1, 2021.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at *http://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Denise Ruggles, FGIS Executive Program Analyst, AMS, USDA; Telephone: (816) 659–8406; Email: *Denise.M.Ruggles@usda.gov.*

SUPPLEMENTARY INFORMATION: The USGSA (7 U.S.C. 71 *et seq.*) authorizes FGIS, a program area within AMS, to supervise grain inspection and weighing services provided by official agencies and to charge and collect reasonable fees to cover the cost of such supervision. These fees are charged by official agencies to their customers (grain industry) as part of the overall fee charged for inspection and weighing services. Supervision fees collected by FGIS cover, as nearly as practicable, the program and administrative costs of supervising official agencies.

FGIS regularly reviews its user-fee financed programs under USGSA to determine whether the fees are adequate and appropriate operating reserve fund levels are maintained. On July 1, 2016, following such a review (81 FR 41790; June 28, 2016), FGIS suspended the assessment of fees for supervision of official inspection and weighing services performed by delegated States and/or designated agencies to reduce the operating reserve. This suspension ended on December 31, 2020. FGIS's operating reserve at that time was adequate to cover 3 to 6 months' operating expenses as required, but the program will need to resume assessment of tonnage fees to cover the ongoing costs of supervision.

Based on the review, FGIS proposes to move to a standardized formula model for annual fee adjustments to recover the costs associated with administering the official agency supervision program. This action would maintain FGIS's financial stability to assure continued inspection and weighing services to the grain industry, which would further facilitate the sound and orderly marketing of grain in domestic and export markets. FGIS believes this approach would be acceptable to the grain industry.

The fees for supervising official agencies were last revised in 2005 (70 FR 50149; August 26, 2005). The fee schedule at 7 CFR 800.71(a)(2) (Schedule B) has not been changed since then. Currently, the FGIS fee for supervision of official agencies is set at $0.011 per metric ton of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada or Mexico.

Financial data for the supervision of official agencies program for fiscal years (FY) 2016 through 2020 is reviewed in Table 1.

TABLE 1—SUPERVISION OF OFFICIAL AGENCIES FINANCIAL ANALYSIS

[Millions of dollars]*

	FY 16	FY 17	FY 18	FY 19	FY 20
Revenue	$1.91	$0.00	$0.00	$0.00	$0.00
Obligations	1.43	1.78	1.88	1.55	1.81
Annual Surplus or (Deficit)	0.47	(1.78)	(1.88)	(1.55)	(1.81)
Operating Reserve—running balance	8.73	6.95	5.08	3.53	1.73

* Figures may not sum due to rounding and adjustments of prior year obligations.

As illustrated by Table 1, while revenues have been suspended since July 2016, FGIS obligations have generally increased due to inflation and cost of living adjustments. The exception was in FY19, when the accounts of the former Grain Inspection, Packers and Stockyards Administration (GIPSA), which included FGIS, were merged with AMS, along with the close-out of obligations. As explained above, the current fee structure generated a recurring annual operating surplus for several years, resulting in a decision to suspend the collection of the fees in

2016 that would gradually reduce the operating reserves to meet AMS's target of maintaining funds to cover 3 to 6 months' expenses. Monthly costs to operate the supervision of official agencies in FY 2020 were $151,000. Thus, AMS would consider an operating reserve of between $0.45 million and $0.91 million (3 and 6 times the monthly operating cost, respectively) at the end of FY 2020 to be appropriate. At the end of FY 2020, the operating reserve balance was $1.73 million, enough to cover eleven and one half months of expenses.

To prevent accumulating a reserve balance beyond the targeted amount (3 to 6 times the monthly operating cost), AMS proposes to adopt a standardized formula for calculating user fees for each calendar year (CY). AMS expects that reducing fees in the proposed manner would gradually reduce the balance in the reserve fund, while also allowing FGIS to continue making strategic operational expenditures to meet industry expectations and achieve United States Department of Agriculture (USDA) goals.

Calculations

This proposal calculates the supervision tonnage fee using the prior year's actual costs and average yearly tonnage of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico during the previous 5 fiscal years.

As a result, we are proposing to add new § 800.71(b)(2)(i) and (ii) to include the following formulas for calculating fee rates for CY 2021 and succeeding years.

Operating Reserve Adjustment. FGIS would divide the total prior year supervision costs by 2 to determine the 6-months operating reserve goal. From that value, FGIS would subtract the FY operating reserve ending balance to obtain the operating reserve adjustment for determining the supervision tonnage fee.

Supervision tonnage fee. FGIS would add the total prior year supervision costs and the operating reserve adjustment, then divide the result by the previous 5-year average tonnage. If the calculated fee is zero or a negative value, FGIS would suspend collection of supervision tonnage fees for the next calendar year.

In addition to implementing a new formula for calculating supervision tonnage fees, this proposal would also revise:

- Section 801.71(a)(2)—Schedule B—to remove the currently specified fee and provide that annual supervision fees would be as published on the AMS website.
- The introductory text of § 801.71(b)—Annual review of fees—to convey that weighing and inspection fees, as well as supervision fees, would be recalculated annually.
- Section 801.71(b)(1) to clarify that the tonnage fees calculated in that section pertain only to FGIS inspection and weighing (Schedule A) fees.
- Section 801.71(b) by redesignating paragraph (b)(2) as paragraph (b)(3) and adding a new paragraph (b)(2) that outlines the supervision fee calculations, as described earlier.

Miscellaneous Fees for Other Services

In addition to the above changes related to supervision fees, AMS proposes to make the following changes to other fee requirements in § 801.71(d).

The proposed rule would remove the introductory text of § 801.71(d)(1)(i)—Registration certificates and renewals, and would consolidate paragraphs (d)(1)(i)(A) and (B) of that section, which currently provide flat fees for registering business operations that buy, handle, weigh, or transport grain for sale in foreign commerce or for such businesses that are also in a control relationship with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce. Currently, the registration fee for the former is $135, and the registration fee for the latter is $270. The proposed rule would combine the two charges into one. AMS proposes to calculate the export registration fee using the following formula and adjust the fees annually, as necessary.

Registration certificates and renewals. FGIS would multiply § 800.71(a) Table 1 of Schedule A noncontract hourly rate by quantity of five. The fee covers FGIS personnel costs to review applications, monitor annually, publication costs, and administrative expenses.

AMS would publish the annual rate in the **Federal Register** and on the AMS website. The anticipated consolidated fee for calendar year 2021 is estimated to be $300 using current published fees.

The proposed rule would remove § 800.71(d)(1)(ii), which provides charges for providing extra copies of registration certificates, as the certificates are now provided electronically for printing by the applicant.

The proposed rule would revise § 800.71(d)(2) to remove the provision of a flat fee for applications to amend an official agency designation and would instead calculate the rate using the following formula. The rate will be adjusted annually and published on the AMS website.

Designation amendments. FGIS will calculate the rate using **Federal Register** publication rate for 3 columns, plus 1 hour of noncontract hourly rate from § 800.71(a) Table 1 of Schedule A. The fee covers FGIS personnel costs, administrative expenses, and **Federal Register** publication costs.

The current rate is $75 per application; AMS estimates the fee would be $510 for calendar year 2021 using current published fees. AMS typically receives only one or two requests each year, so the overall cost to official agencies is not expected to be significant. AMS proposes to review the costs to process and publish designation amendments and adjust the fees annually, as necessary.

Finally, the proposed rule would remove § 800.71(d)(3), which provides a flat application fee for operating a scale testing organization. FGIS hasn't approved such an organization in the past 5 years. Now States that operate as scale testing organizations, in addition to FGIS, provide service in areas that are not in reasonably close proximity to FGIS duty stations. Scale operators pay far less in travel costs by obtaining services provided by their local State scale testing organizations on behalf of FGIS. Additionally, this increases FGIS efficiency by reducing staff travel and allowing their deployment to other mission duties.

Executive Orders 12866 and 13563

Executive Orders 12866—Regulatory Planning and Review, and 13563—Improving Regulation and Regulatory Review, 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, harmonizing rules, and promoting flexibility. This proposed rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

AMS considered several alternatives to the changes in this proposed rule, including reinstating the current fee or applying a standardized formula using 1 year of supervision tonnage versus the 5-year supervision tonnage average.

Ultimately, AMS determined that the proposed approach of recalculating the fee each year using a standard formula based on a 5-year supervision tonnage average would provide savings to the industry when the operating reserve balance exceeds FGIS's goal and would limit large fee increases following years where supervision tonnage volumes are significantly less. AMS expects the proposed changes to benefit the grain industry by adjusting supervision fee as needed annually to reflect actual expenses related to grain inspections supervision and maintaining appropriate operating reserve balances. AMS does not expect the proposed rule to provide any environmental, public health, or safety benefits. AMS has not identified any costs related to this proposed action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. This proposed rule is not intended to have retroactive effect. The USGSA provides in Sec. 87g that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule. No administrative proceedings would be required before parties could file suit in court challenging the provisions of this proposed rule.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602), AMS has considered the economic impact of this proposed action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

This proposed rule sets the fees for three different FGIS functions: (1) Fees for FGIS Supervision, (2) fees for registration certificates and renewals for exporters of grain, and (3) fees for amending the designation of official agencies.

AMS has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, because most applicants (grain industry) that apply for these official services and are subjected to AMS supervision fees, do not meet the requirements for small entities. This proposed rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States to Canada and Mexico. There are approximately 9,500 off-farm storage facilities in the United States that could receive grain services from delegated States or designated agencies. AMS estimates 25 percent of these users would be considered small businesses based on criteria established by the Small Business Administration (13 CFR 121.201) (SBA) to differentiate between large and small business entities. SBA uses the North American Industry Classification System (NAICS) to categorize various industry businesses. SBA defines small grain farmers, NAICS codes 424510 and 493130, as those whose annual receipts do not exceed $750,000 and no more than 500 employees.

With respect to fees for supervision, those fees are a minor amount compared to the total value of the grain shipments. The carrier types shipped by small entities are submitted samples and trucks with a standardized weight of 23.95 metric tons and railcars with a standardized weight of 99.79 metric tons. Supervision fees assessed on these carriers at the current published rate are $0.26 per truck with a 2020 corn market year value of $2,700, and $1.10 per railcar with a 2020 corn market year value of $12,600.

The registration certificates and renewal fee applies to persons engaged in the business of buying grain for sale in foreign commerce, and in the business of handling, weighing, or transporting of grain for sale in foreign commerce. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services were provided by AMS and official agencies on a fee basis for 73 registered exporters in CY 2019. Seventy-seven of the currently registered entities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the SBA. In 2019, approximately 11 small exporters registered with FGIS, and in 2020 approximately 7 small exporters registered with FGIS. As explained, with the estimated calculation of the registration fees for 2021 at $300, FGIS believes the registration fees would have a minor effect on the small number of small business that register with FGIS.

Finally, the designation amendment applies to an official agency requesting a modification to its designation within the five-year designation period. AMS has 42 designated States and agencies, and thirteen of these designated agencies meet the criteria for small entities established by the SBA. As explained earlier, the estimated designation amendment fee for 2021 would be $510. FGIS believes the designation amendment fee would have a minor impact on small businesses, since it typically receives no more than two modification requests per year.

Proposed adoption of standardized AMS user-fee rate calculations for 2021 and beyond would benefit all inspection applicants, regardless of size, as fees would more closely reflect the current cost of inspections, and the fee calculation process would be more transparent. Through its annual review, AMS would be able to monitor the financial status of the grain supervision program to determine whether further adjustments are necessary.

AMS has determined this proposed rule would not have a significant economic impact on a substantial number of entities as defined under the RFA because fewer than half the applicants for grain inspection services meet the definition of small entities.

Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Paperwork Reduction Act and E-Government Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements of the supervision of official agencies program have previously been approved by OMB under control number 0580–0013. No additional reporting, record keeping, or other compliance requirements would be imposed as a result of this proposed rule.

AMS is committed to complying with the E-Government Act (44 U.S.C. 3601 *et seq.*), to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 800 as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

§ 800.71 [Amended]

■ 2. Amend § 800.71 by:
■ a. Revising paragraph (a)(2);
■ b. Revising the introductory text in paragraph (b);
■ c. Revising the first sentence in paragraph (b)(1);
■ d. Redesignating paragraph (b)(2) as paragraph (b)(3);
■ e. Adding new paragraph (b)(2); and
■ f. Revising paragraph (d).

The revisions and addition read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

(2) *Schedule B—Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States.* The supervision fee charged by the Service will be assessed per metric ton of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico. For each calendar year, FGIS will calculate Schedule B fees as defined in paragraph (b) of this section. FGIS will publish a notice in the **Federal Register** and post Schedule B fees on the Agency's public website.

(b) *Annual review of fees.* For each calendar year, starting with 2021, the Service will review the fees of this section and publish fees each year according to the following:

(1) *Tonnage fees.* Tonnage fees in Schedule A in paragraph (a)(1) of this section will consist of the national tonnage fee and local tonnage fees and will be calculated and rounded to the nearest $0.001 per metric ton. * * *

* * * * *

(2) *Supervision fee.* Supervision fee in Schedule B in paragraph (a)(2) of this section will be set according to the following:

(i) *Operating reserve adjustment.* The operating reserve adjustment is the supervision program costs for the previous fiscal year divided by 2 less the end of previous fiscal year operating reserve balance.

(ii) *Supervision tonnage fee.* The supervision tonnage fee is the sum of the prior fiscal year program costs plus operating reserve adjustment divided by the average yearly tons of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico during the previous 5 fiscal years. If the calculated value is zero or a negative value, the collection of supervision tonnage fees will be suspended for one calendar year.

* * * * *

(d) *Miscellaneous fees for other services.* For each calendar year, the Service will review the fees of this section and publish fees in the **Federal Register** and on the AMS website.

(1) *Registration certificates and renewals.* The fee for registration certificates and renewals will be published annually in the **Federal Register** and on the Agency's public website, and will be based upon the noncontract hourly rate multiplied by five. If you operate a business that buys, handles, weighs, transports grain for sale in foreign commerce, or you are also in a control relationship (see definition in section 17A(b)(2) of the Act) with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce, you must complete an application and pay the published fee.

(2) *Designation amendments.* The fee for amending designations will be published annually in the **Federal Register** and on the Agency's public website. The fee will be based upon the cost of publication plus one hour at the noncontract hourly rate. If you submit an application to amend a designation, you must pay the published fee.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2021–03537 Filed 3–1–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 350, 352, 354, 362, 381, 533, 590, and 592

[Docket No. FSIS–2020–0019]

RIN 0583–AD86

Internet Access at Official Establishments and Plants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to require official meat and poultry establishments and egg products plants and businesses receiving voluntary inspection services from FSIS that have an internet connection to provide FSIS access to it for the purposes of conducting and recording inspection verification activities. FSIS views internet service as a necessary utility, like lighting, heating, and laundry services, that should be provided by establishments as a regulatory condition of receiving inspection. Under this proposal, FSIS would not require establishments without internet access to purchase it or to upgrade the internet services they have, if inadequate for FSIS use.

DATES: Submit comments on or before May 3, 2021.

ADDRESSES: FSIS invites interested persons to submit comments on the proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2020–0019. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 720–0399.

SUPPLEMENTARY INFORMATION:

Background

FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. In

addition to mandatory inspection, the Agricultural Marketing Act (AMA), 7 U.S.C. 1622, 1624, provides for inspection services to accommodate business needs, such as obtaining certifications necessary to meet requirements of importing countries or the inspection of nonamenable products (voluntary reimbursable services). This includes the voluntary service activities related to export certification (9 CFR part 350), voluntary inspection of exotic animals (*e.g.,* antelope, bison) (9 CFR part 352), voluntary inspection of rabbits (9 CFR part 354), voluntary poultry inspection (9 CFR part 362), and the voluntary inspection of egg products (9 CFR part 592).

FSIS inspection program personnel (IPP) need to have efficient internet access to receive their scheduled inspection tasks and to record the results of the inspection tasks in the FSIS Public Health Information System (PHIS). PHIS is a web-based software application that integrates and streamlines all scheduling, assigning, tracking, and documentation for mission required FSIS food safety functions such as import management, export management, domestic production inspections, and risk analysis. FSIS employees, representatives of countries with whom the United States maintains an import and export relationship, and meat, poultry, and egg products establishments, which are subject to inspection, may all use PHIS. PHIS replaced several legacy client-server applications, multiple automated paper, and email-based processes.

For example, PHIS:

- Contains the establishment profile data for both official and non-official establishments that is used not only by IPP to perform their verification activities but also by other FSIS program areas to schedule laboratory sampling, inform policy decisions, and allocate resources.
- Contains slaughter totals and animal disposition information for amenable and exotic species, as entered by IPP. This data is used by FSIS and other USDA agencies (*e.g.,* the Animal and Plant Health Inspection Service) to inform policy decisions, track emerging disease trends, and allocate resources.
- Contains inspection results and provides IPP the ability to issue non-compliance records to address regulatory violations at official and non-official establishments.
- Allows IPP to request sampling supplies and receive laboratory sample results.
- Provides for IPP review and approval of electronic import applications in the PHIS import management component, as well as electronic export applications for shipments destined to countries included in the PHIS export component.

The regulations at 9 CFR 307.1, 381.36(a), and 533.3 require official meat, poultry, and Siluriformes fish establishments to provide FSIS IPP with office space, including necessary furnishings, light, heat, and janitor services, rent free, for their exclusive use for official purposes. These regulations state that, at the discretion of the Administrator, small establishments requiring less than one full-time inspector need not furnish such facilities. The regulations at 590.136(a) similarly state that egg products plants will furnish office space, including furnishings, light, heat, and janitor service, without cost, for the use of IPP for official purposes. These regulations also provide that, at the discretion of the Administrator, small plants requiring the services of less than one full-time inspector need not furnish such accommodations.

The United States bears the cost of providing mandatory inspection services to official establishments (21 U.S.C. 468, 695, 1053(a)), while establishments and other facilities receiving voluntary inspection services must pay for such services. FSIS regulations governing the voluntary inspection of rabbits and egg products (*e.g.,* inspection of the processing in official plants of products containing eggs, sampling of products and quantity and condition inspection of products) require that facilities purchasing such inspection services provide office space and utilities for use by IPP. Specifically, the regulations at 9 CFR 354.221(g) require facilities receiving voluntary rabbit inspection to provide IPP with office space, including, but not limited to, light, heat, and janitor services, without cost to the Agency. And, the regulations at 9 CFR 592.95(b)require facilities receiving voluntary inspection of egg products to provide IPP with acceptable furnished office space and equipment, including, but not limited to, a desk, lockers, or cabinets.

Establishments and other facilities that purchase other types of voluntary services under 9 CFR 350.7(a), 352.5(a), 362.5(a), including identification services, certification services, and voluntary inspection services may be charged to cover the cost of ''other expenses'' incurred by the Agency in connection with the furnishing of inspection. FSIS considers internet access to be an expense necessary for the provision of these voluntary inspection services.

As such, because internet access is a utility or expense necessary for the provision of both mandatory and voluntary inspection services, FSIS is proposing to require that establishments receiving mandatory inspection or purchasing voluntary inspection services provide internet access to IPP, as a condition of receiving inspection, provided the establishment already has internet service adequate for FSIS needs. Again, FSIS would not require establishments or facilities without internet access to purchase it or to upgrade the internet services they have, if inadequate for FSIS use.

Proposed Rule

FSIS is proposing to amend sections 9 CFR 307.1, 350.7(d), 352.5(d), 354.221(g), 362.5(d), 381.36(a), 533.3, 590.136(a), and 592.95(b) to require official meat, poultry, Siluriformes fish establishments and egg products plants, as well as facilities receiving voluntary services, including identification services, export certification, and voluntary exotic animal and poultry inspection, that have internet services, to provide FSIS IPP with internet access for the purposes of conducting and recording inspection verification activities. Consistent with the regulations providing that small establishments requiring less than one full-time inspector need not furnish FSIS with office space, lighting, heat, janitor services, and lockers, under this proposal, FSIS would not require establishments or facilities without internet access to purchase it or to upgrade the internet services they have, if inadequate for FSIS use.

In addition, FSIS is proposing to update 9 CFR 307.1 and 381.36(a) to change the title of the FSIS approving officials to Frontline Supervisors because FSIS no longer uses the title Circuit Supervisors. FSIS also proposes to change the use of the word ''shall'' to ''must'' in 9 CFR 307.1 and 381.36(a).

Executive Orders 12866 and 13563, 12988, and the Regulatory Flexibility Act

Executive Orders (E.O.s) 12866 and 13563 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been

designated as a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

If this rule is finalized, FSIS does not expect any additional industry or Agency costs, because FSIS would not require establishments without internet access to purchase the services or to upgrade services that are not adequate for FSIS's use. FSIS would have cost savings by reducing the costs of providing internet access to FSIS IPP at establishments.

Expected Benefits of the Proposed Rule

Internet connectivity benefits establishments and FSIS by facilitating FSIS verification activities. Internet access lets FSIS IPP more efficiently transmit or receive critical information (*e.g.,* receiving information on test results, submitting data on establishment operations, updating establishment profile information, and facilitating global trade).

FSIS would benefit through reduced payments for internet connection. FSIS spends on average $6.6 million [1] annually providing IPP with various forms of internet connection, such as direct or wireless local area network (LAN), and wireless solutions at approximately 1,500 establishments as well as additional mobile wireless solutions for IPP on patrol assignments. Of the approximate 6,500 active establishments, FSIS estimates that approximately 6,000 to 6,300 establishments have email addresses,[2] which we assume means that these establishments have internet connection. The Agency is seeking comment on the level of internet connectivity at establishments that currently maintain internet services. If the Agency is able to use internet provided by these establishments, it would result in an upper bound savings of $6.6 million annualized at the 7 percent discount rate over ten years.

[1] This is the average cost calculated using the FSIS Office of Chief Information Officer estimates of annual expenditures on internet services: $6,272,000 in 2017, $6,755,000 in 2018, and $6,755,000 in 2019.

[2] The count of establishments, rounded to the nearest hundred, with email addresses was compiled from the Office of Public Affairs and Consumer Education on 5/15/2020. The count of active establishments includes approximately 1,100 eligible importer/exporter establishments and approximately 2,000 establishments that have voluntary inspection eligibility. Data was downloaded from the FSIS Public Health Information System on 8/14/2020.

Expected Costs of the Proposed Rule

FSIS expects any cost associated with this proposed rule to be *de minimis.* Since most establishments have email addresses, FSIS expects most establishments to have internet connectivity adequate for FSIS needs. Such establishments would likely be able to provide internet service to FSIS without a significant burden or additional costs to do so. FSIS requests comments on the number and types of establishments or facilities receiving mandatory or purchasing voluntary inspection services that do not purchase internet services at all, do not purchase internet services adequate for FSIS needs, or could not provide IPP access to internet services without accruing significant costs, as well as any cost estimates for providing IPP with access to the establishment's existing internet services.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), because any costs associated with the rule would be *de minimis.* FSIS would only require small businesses to provide internet access to FSIS IPP if the business has internet service and it's adequate for FSIS's use by IPP.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Environmental Impact

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that a particular action may have a significant environmental effect (7 CFR 1b.4(a)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4(b)(6)).

FSIS has determined that this proposed rule would not create any extraordinary circumstances that would result in this normally excluded action having a significant effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion for FSIS programs and activities under 7 CFR 1b.4.

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Congressional Review Act

Pursuant to the Congressional Review Act at 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs has determined that this proposed rule is not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Constituent Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information,

regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects

9 CFR Part 307

Government employees, Meat inspection.

9 CFR Part 350

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 352

Food labeling, Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 354

Administrative practice and procedure, Animal diseases, Food labeling, Meat inspection, Rabbits and rabbit products, Reporting and recordkeeping requirements, Signs and symbols.

9 CFR Part 362

Meat inspection, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 381

Administrative practice and procedure, Animal diseases, Crime, Exports, Food grades and standards, Food labeling, Food packaging, Government employees, Grant programs—agriculture, Imports, Intergovernmental relations, Laboratories, Meat inspection, Nutrition, Polychlorinated biphenyls (PCB's), Poultry and poultry products, Reporting and recordkeeping requirements, Seizures and forfeitures, Signs and symbols, Technical assistance, Transportation.

9 CFR Part 533

Fish, Food grades and standards, Government employees, Public health, Seafood.

9 CFR Part 590

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

9 CFR Part 592

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR Chapter III as follows:

PART 307—FACILITIES FOR INSPECTION

■ 1. The authority citation for part 307 continues to read as follows:

Authority: 7 U.S.C. 394, 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

■ 2. Revise § 307.1 to read as follows:

§ 307.1 Facilities for Program employees.

Office space, including necessary furnishings, light, internet access, heat, and janitor service, must be provided by official establishments, rent free, for the exclusive use for official purposes of the inspector and other Program employees assigned thereto. The space set aside for this purpose must meet with approval of the Frontline Supervisors and must be conveniently located, properly ventilated and provided with lockers suitable for the protection and storage of Program supplies and with facilities suitable for Program employees to change clothing if such clothes changing facilities are deemed necessary by FSIS. At the discretion of the Administrator, small plants requiring the services of less than one full-time inspector need not furnish facilities as prescribed in this section, where adequate facilities exist in a nearby convenient location. Laundry service for inspectors' outer work clothing must be provided by each establishment. Establishments that lack internet services are not required to purchase internet services for use by FSIS and establishments with internet services inadequate for use by FSIS are not required to upgrade such services.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

■ 3. The authority citation for part 350 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.55.

■ 4. In § 350.7, revise the section heading and add paragraph (h) to read as follows:

§ 350.7 Fees, charges, and Internet access.

* * * * *

(h) Internet access must be provided by the applicant for service, rent free, for the exclusive use for official purposes of the inspector and other Program employees assigned thereto. Applicants that lack internet services are not required to purchase internet services for use by FSIS and applicants with internet services inadequate for use by FSIS are not required to upgrade such services.

PART 352—EXOTIC ANIMALS AND HORSES; VOLUNTARY INSPECTION

■ 5. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

■ 6. In § 352.5, revise the section heading and add paragraph (f) to read as follows:

§ 352.5 Fees, charges and Internet access.

* * * * *

(f) Internet access must be provided by the applicant for service, rent free, for the exclusive use for official purposes of the inspector and other Program employees assigned thereto. Applicants that lack internet services are not required to purchase internet services for use by FSIS and applicants with internet services inadequate for use by FSIS are not required to upgrade such services.

PART 354—VOLUNTARY INSPECTION OF RABBITS AND EDIBLE PRODUCTS THEREOF

■ 7. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

■ 8. Revise § 354.221(g) to read as follows:

§ 354.221 Rooms and compartments.

* * * * *

(g) *Inspector's office.* Furnished office space, including, but not being limited to, light, heat, internet access, and janitor service shall be provided rent free in the official plant for the exclusive use for official purposes of the inspector and the Administration. The room or rooms set apart for this purpose must meet with the approval of the Frontline Supervisor and be conveniently located, properly ventilated, and provided with lockers or cabinets suitable for the protection and storage of supplies and with facilities suitable for inspectors to change clothing. Facilities that lack internet services are not required to purchase internet services for use by FSIS, and facilities with internet services inadequate for use by FSIS are not required to upgrade such services.

PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

■ 9. The authority citation for part 362 continues to read as follows:

Authority: 7 U.S.C. 1622; 7 CFR 2.18(g) and (i), 2.53.

■ 10. In § 362.5, revise the section heading and add paragraph (h) to read as follows:

§ 362.5 Fees, charges, and Internet access.

* * * * *

(h) Internet access must be provided by the applicant for service, rent free, for the exclusive use for official purposes of the inspector and other Program employees assigned thereto. Applicants that lack internet services are not required to purchase internet services for use by FSIS and applicants with internet services inadequate for use by FSIS are not required to upgrade such services.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 11. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 1633, 1901–1906; 21 U.S.C. 451–472; 7 CFR 2.18, 2.53.

■ 12. Revise § 381.36(a) to read as follows:

§ 381.36 Facilities required.

(a) *Inspector's Office.* Office space, including, but not being limited to furnishings, light, internet access, heat, and janitor service, must be provided rent free in the official establishment, for the use of Government personnel for official purposes. The room or space set apart for this purpose must meet the approval of Frontline Supervisors and be conveniently located, properly ventilated, and provided with lockers or file cabinets suitable for the protection and storage of supplies and with facilities suitable for inspectors to change clothing. At the discretion of the Administrator, small plants requiring the services of less than one full-time inspector need not furnish facilities as prescribed in this section, where adequate facilities exist in a nearby convenient location. Each official establishment must provide commercial laundry service for inspectors' outer work clothing, or disposable outer work garments designed for one-time use, or uniform rental service garments which are laundered by the rental service. Establishments that lack internet services are not required to purchase internet services for use by FSIS and establishments with internet services inadequate for use by FSIS are not required to upgrade such services.

* * * * *

PART 533—SEPARATION OF ESTABLISHMENT; FACILITIES FOR INSPECTION; FACILITIES FOR PROGRAM EMPLOYEES; OTHER REQUIRED FACILITIES

■ 13. The authority citation for part 533 continues to read as follows:

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

■ 14. Revise § 533.3 to read as follows:

§ 533.3 Facilities for Program employees.

Office space, including necessary furnishings, light, internet access, heat, and janitor service, must be provided by official establishments, rent free, for the exclusive use for official purposes of the inspector and other Program employees assigned thereto. The space set aside for this purpose shall meet with approval of the District Manager or the frontline supervisor and must be conveniently located, properly ventilated, and provided with lockers suitable for the protection and storage of Program supplies and with facilities suitable for Program employees to change clothing if such facilities are deemed necessary by the frontline supervisor. At the discretion of the Administrator, small establishments requiring the services of less than one full-time inspector need not furnish facilities for Program employees as prescribed in this section, where adequate facilities exist in a nearby convenient location. Laundry service for inspectors' outer work clothing must be provided by each establishment. Establishments that lack internet services are not required to purchase internet services for use by FSIS and establishments with internet services inadequate for use by FSIS are not required to upgrade such services.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

■ 15. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056; 7 CFR 2.18, 2.53.

■ 16. Revise § 590.136(a) to read as follows:

§ 590.136 Accommodations and equipment to be furnished by facilities for use of inspection program personnel in performing service.

(a) *Inspection program personnel office.* Office space, including, but not limited to, furnishings, light, heat, internet access, and janitor service, will be provided without cost in the official plant for the use of inspection program personnel for official purposes. The room or space set apart for this purpose must meet the approval of the Food Safety and Inspection Service and be conveniently located, properly ventilated, and provided with lockers or file cabinets suitable for the protection and storage of supplies and with accommodations suitable for inspection program personnel to change clothing. At the discretion of the Administrator, small official plants requiring the services of less than one full-time inspector need not furnish accommodations for inspection program personnel as prescribed in this section where adequate accommodations exist in a nearby convenient location. Plants that lack internet services are not required to purchase internet services for use by FSIS, and plants with internet services inadequate for use by FSIS are not required to upgrade such services.

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

■ 17. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 18. Revise § 592.95(b) to read as follows:

§ 592.95 Facilities and equipment to be furnished for use of inspection program personnel in performing service.

* * * * *

(b) Acceptable furnished office space and equipment, including but not being limited to, internet access, a desk, lockers or cabinets (equipped with a satisfactory locking device) suitable for the protection and storage of supplies, and with facilities for inspection program personnel to change clothing. Facilities that lack internet services are not required to purchase internet services for use by FSIS, and facilities with internet services inadequate for use by FSIS are not required to upgrade such services.

Done at Washington, DC.

Theresa Nintemann,

Acting Administrator.

[FR Doc. 2021–03609 Filed 3–1–21; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0105; Project Identifier MCAI–2020–01422–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model SA330J helicopters. This proposed AD was prompted by the failure of a second stage planet gear installed in the main gearbox (MGB). This proposed AD would require repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, analyzing any metal particles that are found, and replacement of the MGB if necessary, as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 16, 2021.

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

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

For material that is proposed for IBR in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0105.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0105; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0105; Project Identifier MCAI–2020–01422–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposal.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0272, dated December 13, 2018 (EASA AD 2018–0272) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model SA330J helicopters.

This proposed AD was prompted by the failure of a second stage planet gear installed in the MGB of an Airbus Helicopters Model EC225LP helicopter. Airbus Helicopters Model SA330J helicopters have a similar design, therefore, these models may be subject to the unsafe condition revealed on the Model EC225LP helicopter. The FAA is proposing this AD to address failure of

a second stage planet gear installed in the MGB, which could result in failure of the MGB and subsequent loss of control of the helicopter. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2018–0272 describes procedures for repetitively inspecting the MGB particle detector and the MGB bottom housing (oil sump) for metal particles, analyzing any metal particles that are found, and replacement of the MGB if necessary. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0272, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2018–0272 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2018–0272 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2018–0272 that is required for compliance with EASA AD 2018–0272 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0105 after the FAA final rule is published.

Interim Action

The FAA considers this proposed AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD affects 15 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	$0	$425	$6,375

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
40 work-hours × $85 per hour = $3,400	$600,000 (overhauled)	$603,400

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.

Regulatory Findings

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

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

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

(2) 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2021–0105; Project Identifier MCAI–2020–01422–R.

(a) Comments Due Date

The FAA must receive comments by April 16, 2021.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model SA330J helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 6320, Main Rotor Gearbox.

(e) Reason

This AD was prompted by a failure of a second stage planet gear installed in the main gearbox (MGB). The FAA is issuing this AD to address failure of an MGB second stage planet gear, which could result in failure of the MGB and subsequent loss of control of the helicopter.

(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, European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0272, dated December 13, 2018 (EASA AD 2018–0272).

(h) Exceptions to EASA AD 2018–0272

(1) Where EASA AD 2018–0272 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2018–0272 refers to March 30, 2018 (the effective date of EASA AD 2018–0065, dated March 23, 2018), this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2018–0272 does not apply to this AD.

(4) Where EASA AD 2018–0272 refers to flight hours (FH), this AD requires using hours time-in-service.

(5) Where paragraph (1) of EASA AD 2018–0272 specifies to inspect the MGB particle detector ''in accordance with the instructions of Section 3 of the ASB'' for this AD use ''in accordance with the instructions in step 3.B.2.a. of the ASB.''

(6) Where paragraph (2) of EASA AD 2018–0272 specifies to inspect the MGB bottom housing (oil sump) ''in accordance with the instructions of Section 3 of the ASB'' for this AD use ''in accordance with the instructions in step 3.B.2.b. of the ASB.''

(7) Where the service information referenced in EASA AD 2018–0272 specifies to perform a metallurgical analysis and contact the manufacturer if unsure about the characterization of the particles collected, this AD does not require contacting the manufacturer to determine the characterization of the particles collected.

(8) Although the service information referenced in EASA AD 2018–0272 specifies that if any 16NCD13 particles are found to contact the manufacturer and send a 1-liter sample of oil to the manufacturer, this AD does not require that action.

(9) Although the service information referenced in EASA AD 2018–0272 specifies returning certain parts to the manufacturer, this AD does not require that action.

(10) Where EASA AD 2018–0272 specifies actions be done after the last flight of the day or ''ALF,'' this AD requires doing those actions before the first flight of the day.

(11) Although the service information referenced in EASA AD 2018–0272 specifies discarding certain parts, this AD requires removing the parts from service.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be modified (if the operator elects to do so), provided that the helicopter is operated during the day, under visual flight rules, and with no passengers onboard.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Strategic Policy Rotorcraft Section, 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. Send your proposal to: Manager, Strategic Policy Rotorcraft Section, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5110. Information may be emailed to: *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) 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.

(k) Related Information

(1) For EASA AD 2018–0272, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0105.

(2) For more information about this AD, contact Mahmood G. Shah, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5538; email: *mahmood.g.shah@faa.gov.*

Issued on February 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–03951 Filed 3–1–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0054; Airspace Docket No. 20–AGL–34]

RIN 2120–AA66

Proposed Establishment of Area Navigation (RNAV) Routes T–322, T–392, T–403, and T–405; Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish area navigation (RNAV) routes T–322, T–392, T–403, and T–405 in the central United States. The proposed new RNAV routes would expand the availability of RNAV routing in support of transitioning the National Airspace System (NAS) from ground-based to satellite-based navigation. Additionally, a portion of the new RNAV routes would provide enroute structure where VHF Omnidirectional Range (VOR) Federal airway segments were removed due to the Sioux City, IA; Park Rapids, MN; and Huron, SD, VORs decommissioning in support of the

FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before April 16, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0054; Airspace Docket No. 20–AGL–34 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in the central United States and improve the efficient flow of air traffic within the NAS by lessening the dependency on ground-based navigation.

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2021–0054; Airspace Docket No. 20–AGL–34) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0054; Airspace Docket No. 20–AGL–34.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020 and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen efforts to improve the safety and efficiency of the NAS, as well as transition the NAS from a ground-based to a satellite-based Performance Based Navigation (PBN) system, the FAA is proposing to establish RNAV routes T–322, T–392, T–403, and T–405 to provide additional PBN enroute structure. This action would reduce air traffic control (ATC) sector workload and complexity, reduce pilot-to-controller communication, assist ATC when non-radar procedures are required, and increase NAS capacity in the areas of the new RNAV T-routes.

Additionally, the proposed T-routes would compensate for the previously removed airway segments of VOR Federal airways due to the Sioux City, IA; Park Rapids, MN; and Huron, SD, VORs being decommissioned effective February 25, 2021. The new T-routes would also provide Instrument Flight Rules (IFR) pilots that are equipped for RNAV PBN additional ATS route options for navigating around areas of heavy aviation activity and in areas of limited or no radar coverage. Visual Flight Rules (VFR) pilots, equipped with RNAV PBN, who elect to navigate via ATS routes, could also take advantage of the proposed RNAV T-routes.

The new routes will also assist in reducing workload and sector complexity for air traffic controllers, facilitate reduction of air to ground communications, and assist in

increasing the efficiency and capacity of the NAS.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish RNAV routes T–322, T–392, T–403, and T–405. The proposed new T-routes are described below.

T–322: T–322 is a new RNAV route that extends between the Rapid City, SD, VOR/Tactical Air Navigation (VORTAC) and the Redwood Falls, MN, VOR/Distance Measuring Equipment (VOR/DME). This T-route provides enroute routing over VOR Federal airway V–26.

T–392: T–392 is a new RNAV route that would extend between the MZEEE, IA, waypoint (WP) located near the Sioux City, IA, VORTAC and the GRSIS, MN, WP located near the Fairmont, MN, DME.

T–403: T–403 is a new RNAV route that would extend between the GENEO, MN, WP located near the Darwin, MN, VORTAC and the BLUOX, MN, fix located 40 NM North of the Park Rapids, MN, DME. This T-route would provide enroute routing adjacent to VOR Federal airway V–171 between the Darwin, MN, VORTAC and the Alexandria, MN, VOR/DME; and overlapping VOR Federal airway V–175 between the Alexandria, MN, VOR/DME and the BLUOX, MN, fix.

T–405: T–405 is a new RNAV route that would extend between the FIITS, SD, WP located near the Yankton, SD, VOR/DME and the GICHI, ND, WP located near the Devils Lake, ND, VOR/DME. This T-route would provide enroute routing adjacent to VOR Federal airway V–159 between the Yankton, SD, VOR/DME and the Huron, SD, DME; enroute routing adjacent to VOR Federal airway V–15 between the Huron, SD, DME and the Aberdeen, SD, VOR/DME; and enroute routing adjacent to VOR Federal airway V–170 between the Aberdeen, SD, VOR/DME and the Devils Lake, ND, VOR/DME.

United States RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–322 Rapid City, SD (RAP) to Redwood Falls, MN (RWD)

Rapid City, SD (RAP)	VORTAC	(Lat. 43°58′33.74″ N, long. 103°00′44.38″ W)
Philip, SD (PHP)	VOR/DME	(Lat. 44°03′29.66″ N, long. 101°39′51.10″ W)
Pierre, SD (PIR)	VORTAC	(Lat. 44°23′40.40″ N, long. 100°09′46.11″ W)
DAKPE, SD	WP	(Lat. 44°25′58.37″ N, long. 098°42′23.05″ W)
Redwood Falls, MN (RWD)	VOR/DME	(Lat. 44°28′02.19″ N, long. 095°07′41.63″ W)

* * * * * * *

T392 MZEEE, IA to GRSIS, MN

MZEEE, IA	WP	(Lat. 42°20′40.66″ N, long. 096°19′24.54″ W)
KAATO, IA	WP	(Lat. 42°35′06.89″ N, long. 095°58′53.08″ W)
BERRG, IA	WP	(Lat. 43°08′17.21″ N, long. 095°10′46.46″ W)
GRSIS, MN	WP	(Lat. 43°38′45.54″ N, long. 094°25′21.17″ W)

T–403 GENEO, MN to BLUOX, MN

GENEO, MN	WP	(Lat. 45°05′15.37″ N, long. 094°27′14.30″ W)
Alexandria, MN (AXN)	VOR/DME	(Lat. 45°57′30.20″ N, long. 095°13′57.48″ W)
Park Rapids, MN (PKD)	DME	(Lat. 46°53′53.34″ N, long. 095°04′15.21″ W)
BLUOX, MN	WP	(Lat. 47°34′33.13″ N, long. 095°01′29.11″ W)

T–405 FIITS, SD TO GICHI, ND

FIITS, SD	WP	(Lat. 42°55′06.67″ N, long. 097°23′06.31″ W)
Mitchell, SD (MHE)	VOR/DME	(Lat. 43°46′37.28″ N, long. 098°02′15.28″ W)
DIDDL, SD	WP	(Lat. 44°26′24.32″ N, long. 098°18′39.06″ W)
Aberdeen, SD (ABR)	VOR/DME	(Lat. 45°25′02.48″ N, long. 098°22′07.39″ W)
Jamestown, ND (JMS)	VOR/DME	(Lat. 46°55′58.34″ N, long. 098°40′43.57″ W)
FARRM, ND	FIX	(Lat. 47°29′14.17″ N, long. 099°01′34.50″ W)
GICHI, ND	WP	(Lat. 48°06′54.20″ N, long. 098°54′45.14″ W)

Issued in Washington, DC, on February 22, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–03931 Filed 3–1–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 284

[Docket No. RM20–7–000]

Safe Harbor Policy for Data Providers to Price Index Developers

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its regulations to codify the Safe Harbor Policy established in the Commission's *Policy Statement on Natural Gas and Electric Price Indices.* Under the Safe Harbor Policy, data providers that report transactions to natural gas and electric price index developers consistent with the procedures set forth in the *Policy Statement* are afforded a rebuttable presumption that their transaction data is accurate, timely, and submitted in good faith. The proposed change does not modify the existing policy and is intended to promote voluntary reporting of wholesale natural gas and electricity transactions to price index developers by alleviating market participant concerns that the Safe Harbor Policy is not binding on the Commission.

DATES: Comments are due June 1, 2021.

ADDRESSES: Comments, identified by Docket No. RM20–7–000, may be filed electronically at *http://www.ferc.gov* in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments must be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:
Maxwell K. Multer (technical issues), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (202) 502–6756

Evan B. Oxhorn (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (202) 502–8183

SUPPLEMENTARY INFORMATION:

Table of Contents

Paragraph Numbers

1. Under the Commission's regulations, a data provider (a market participant that reports transaction data to price index developers) must submit accurate and factual information to price index developers, and not knowingly submit false or misleading information or omit material information.[1] Pursuant to the Commission's Safe Harbor Policy, which is currently set forth in the Commission's *Policy Statement on Natural Gas and Electric Price Indices,*[2] if the data provider can demonstrate that it has adopted and followed the standards for reporting set forth in the Commission's *Policy Statement,* it will benefit from a rebuttable presumption that it has submitted its transactions accurately, timely, and in good faith. The Commission proposes to codify its Safe Harbor Policy in its regulations. The proposed change does not modify the existing policy and, together with the proposed *Revised Policy Statement* that the Commission is issuing concurrently, is intended to promote voluntary reporting of wholesale natural gas and electricity transactions to price index developers.[3]

2. To codify the Safe Harbor Policy, we specifically propose to amend 18 CFR 35.41(c), 284.288(a), and 284.403(a) of the Commission's regulations by adding language to indicate: (1) That there will be a rebuttable presumption of accuracy, timeliness, and good faith for data providers who submit transactions to price index developers in a manner consistent with the *Policy Statement;* and (2) that inadvertent reporting errors by such data providers will not constitute violations of those regulations.

I. Background

3. Natural gas indices play a vital role in the energy industry, as they are used to price billions of dollars of natural gas and electricity transactions annually in both the physical and financial markets. A natural gas index is a weighted average price derived from a set of fixed-price[4] natural gas transactions within distinct geographical boundaries that market participants voluntarily report to a price index developer.[5]

4. Natural gas indices serve as a proxy for the locational cost of natural gas in the daily and monthly markets, as many market participants reference index prices in their physical and financial transactions. Interstate natural gas pipelines, Independent System Operators (ISOs), and Regional Transmission Organizations (RTOs) reference natural gas indices in their FERC-jurisdictional tariffs for various terms and conditions of service. State commissions also use natural gas indices as benchmarks when reviewing the prudence of natural gas or electricity purchases. Finally, many natural gas financial derivative contracts used in hedging and speculation settle against the natural gas price indices.

5. Given that natural gas price index developers use physical fixed-price natural gas transactions to calculate the price of published natural gas indices, it is important that the market for these transactions be robust, liquid, and transparent. The Commission's investigation into the 2000–2001 Western Energy Crisis revealed problems in how published natural gas price indices were generated that ''facilitate[ed], rather than discourage[d], manipulation and collusion.'' [6] Recognizing the need to restore confidence in natural gas price

[1] This requirement is set forth in three regulations, 18 CFR 35.41(c), 284.288(a), and 284.403(a). Each sets forth the requirement in identical language.

[2] *Policy Statement on Natural Gas and Electric Price Indices,* 104 FERC ¶ 61,121, at P 37 (*Initial Policy Statement*), *clarified,* 105 FERC ¶ 61,282 (2003) (*2003 Clarification Order*), *further clarified,* 112 FERC ¶ 61,040 (2005) (*2005 Clarification Order*) (collectively, *Policy Statement*).

[3] *See Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs,* 173 FERC ¶ 61,237 (2020).

[4] The term fixed-price refers to a negotiated natural gas contract for next-day or next-month delivery, and physical basis transactions for next-month delivery. These transaction types are defined in the FERC Form No. 552: Annual Report of Natural Gas Transactions (FERC Form No. 552). The FERC Form No. 552 requires market participants that annually buy or sell more than 2.2 trillion British Thermal Units (Btu) of physical natural gas to provide aggregated data related to their fixed-price, physical basis, Nymex plus and index-based transactions made in the next-day and next-month (bidweek) markets.

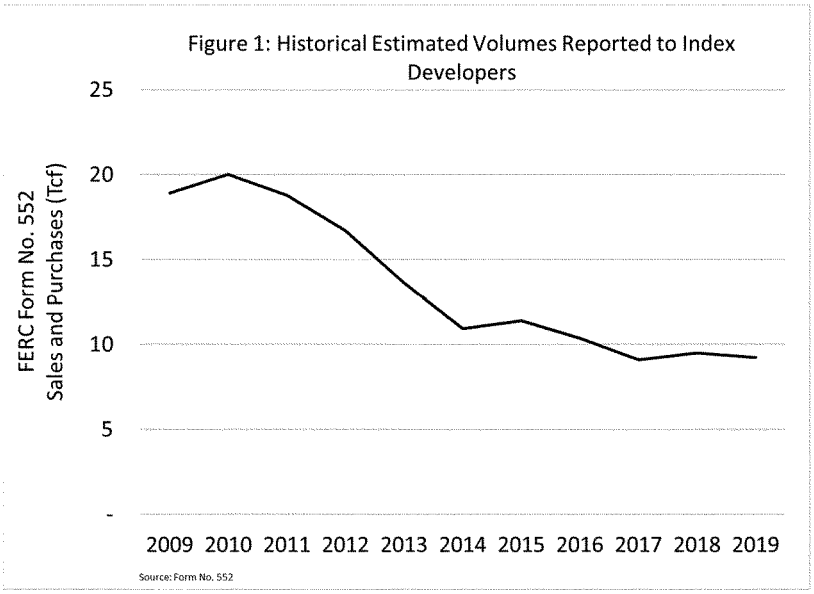
[5] S&P Global Platts (Platts), Natural Gas Intelligence (NGI), Argus, and Natural Gas Week are examples of price index developers.

[6] *Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies,* Docket No. PA02–2–000, at 38 (Aug. 13, 2002).

indices, the Commission began an exhaustive analysis of these and related issues in the form of multiple staff white papers, two technical conferences, and a follow up staff workshop.

6. At the conclusion of these efforts, the Commission issued its *Policy Statement* to explain what the Commission expects of natural gas and electric price indices and under what conditions the Commission will give industry participants safe harbor protection for good faith reporting of transaction data to entities that develop price indices.[7] In particular, the Commission [created] a rebuttable presumption that companies and individuals that report trade data to price index developers in accordance with the standards adopted here are doing so in good faith, and will not be investigated or subjected to administrative penalties for inadvertent mistakes made in the course of reporting energy transaction information.[8] Thus, the Commission adopted the Safe Harbor Policy for the explicit purpose of encourag[ing] more industry participants to contribute to the formation of price indices.[9] Consistent with the *Policy Statement,* the Commission has not investigated or imposed penalties on any companies for inadvertent reporting errors.

7. After the *Policy Statement* was issued, the natural gas volumes market participants reported to price index developers increased, which resulted in greater confidence in those indices. However, after 2010, the estimated traded volume of fixed-price natural gas transactions reported to price index developers began to decline significantly.[10] FERC Form No. 552 data show that the estimated volume of fixed-price transactions voluntarily reported to price index developers declined by approximately 54% from 2010 until 2019.[11] At the same time that fixed-price reporting to price index developers decreased, the traded volume of natural gas transactions that referenced natural gas indices, known as index gas, increased. For example, FERC Form No. 552 data showed that index gas increased from 69% of the traded volumes in the U.S. physical natural gas market in 2010 to 82% in 2019. Figure 1 shows the estimated physical natural gas volumes reported to index developers based on FERC Form No. 552 data.



8. Commission staff held a technical conference on June 29, 2017, which addressed index liquidity and transparency issues and potential actions the Commission could consider taking in order to increase both the volume of transactions reported to natural gas price index developers and the transparency of the physical natural gas price formation process.[12] In post technical conference comments, a number of commenters suggested that placing the Safe Harbor Policy into the Commission's regulations would help to provide regulatory certainty which in turn would lead to an increase in the number of data providers that would report their transactions to price index developers.[13]

II. Discussion

9. The Commission proposes to revise three sections of its regulations, 18 CFR 35.41(c), 284.288(a), and 284.403(a). Although each of the three sections applies to different jurisdictional entities, they set forth almost identical requirements. Section 35.41(c) applies to persons with or seeking authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act. Section 284.288(a) applies to interstate pipelines that offer transportation service under subparts B or G of part 284. Section

[7] *Initial Policy Statement,* 104 FERC 61,121 at P 5.

[8] *Id.*

[9] *Id.*

[10] Two index developers now include fixed-price transactions from the InterContinental Exchange (ICE) to increase the liquidity of their indices. Staff analysis of the estimated volumes reported to index developers does not include that supplemental information from ICE.

[11] The Commission must estimate the volumes reported to price index developers on the FERC Form No. 552 because FERC Form No. 552 filers can provide aggregated data for themselves and their affiliates, some of whom may or may not report to index developers. Staff estimates this volume by calculating the average of the minimum volume reported (*i.e.,* the total volume from filers with affiliates that all indicate that they report to price index developers) and the maximum possible volume reported (*i.e.,* the total volume from filers with at least one affiliate that indicates that it reports to price index developers).

[12] Docket No. AD17–12–000. A staff-led technical conference addressing similar issues was held in 2003 in Docket No. AD03–7–000.

[13] AGA, Comments, Docket No. AD17–12–000, at 7 (filed July 31, 2017); Tenaska Comments, Docket No. AD17–12–000, at 5 (filed July 31, 2017).

284.403(a) applies to sales for resale by persons that are not interstate pipelines. Each section currently requires that data providers reporting transactions to price index developers provide accurate, factual information, and not knowingly submit false or misleading information or omit material information.

Reporting must be performed consistent with the procedures set forth in the *Policy Statement.*[14] The regulations do not incorporate the Safe Harbor Policy.

10. Currently, the Safe Harbor Policy is set forth in the *Policy Statement,* which advises the public about how the Commission intends to exercise its discretionary authority. The *Policy Statement,* however, is non-binding.[15] Although the Commission has never pursued enforcement action against a market participant for inadvertent errors in reporting transactions to price index developers, concerns nonetheless remain among market participants that this potential exists.[16]

11. To alleviate these concerns and encourage voluntary reporting in order to promote more robust, liquid, and transparent indices, we propose to add identical language to 18 CFR 35.41(c), 284.288(a), and 284.403(a) to incorporate the Safe Harbor Policy into the regulatory text. This proposed language states that ''[f]or a Seller who reports in a manner consistent with procedures set forth in the Policy Statement, there will be a rebuttable presumption that information submitted to publishers of electricity or natural gas indices is accurate, timely, and submitted in good faith.'' The proposed revisions also state that ''[i]nadvertent reporting errors by a Seller who reports in a manner consistent with the procedures set forth in the *Policy Statement* shall not constitute violations of this provision.'' This action will eliminate any concerns that the Commission might choose to depart from the Safe Harbor Policy as set forth in the *Policy Statement.*

12. By incorporating the Safe Harbor Policy into the Commission's regulations, the Commission will provide certainty to the regulated industry that, provided that the data provider reports in a manner consistent with the *Policy Statement,* inadvertent errors in reporting will not constitute violations of the Commission's regulations requiring accurate reporting and will not give rise to civil penalties. Under the proposed language, for data providers that report consistent with the *Policy Statement,* only intentional or reckless behavior may give rise to liability. Based on industry comments during and after the technical conference,[17] we believe that incorporation of the Safe Harbor Policy into the Commission's regulations will provide greater certainty to market participants and will lead to increased voluntary reporting to price index developers.

III. Environmental Analysis

13. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[19] The actions proposed here fall within the categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, and for information gathering, analysis, and dissemination.[20] Therefore, an environmental assessment is unnecessary and has not been prepared in this Notice of Proposed Rulemaking.

IV. Regulatory Flexibility Act Certification

14. The Regulatory Flexibility Act of 1980 (RFA)[21] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

15. The Small Business Administration (SBA) size standards for natural gas and electric utilities are based on the number of employees, including affiliates. Under the SBA's standards, some data providers will fall under the following categories and associated size thresholds: Natural Gas Distribution and Electric Power Distribution, both at 1000 employees.[22]

16. Because data providers who choose to report their transactions are already required to submit data consistent with the *Policy Statement* in order to receive the protections of the Safe Harbor Policy, the Commission estimates that there will be no additional compliance burden as a result of this proposed rule.

17. Based on the above, the Commission certifies that implementation of the proposed rule will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

V. Comment Procedures

18. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 1, 2021. Comments must refer to Docket No. RM20–7–000, and must include the commenter's name, the organization they represent, if applicable, and their address.

19. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

20. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

21. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters

[14] 18 CFR 35.41(c), (Market behavior rules); see also 18 CFR 284.288(a) (Code of conduct for unbundled sales service) (identical language); 18 CFR 284.403(a) (Code of conduct for persons holding blanket marketing certificates) (identical language).

[15] *See, e.g., Panhandle Eastern Pipe Line Co.* v. *FERC,* 198 F.3d 266, 269 (D.C. Cir. 1999).

[16] *See Supra* P 8.

[17] *See, e.g.,* American Gas Association, Post-Technical Conference Comments, Docket No. AD17–12–000, at 7 (filed July 31, 2017) (''. . .there is a perception that a ''fat finger'' error could result in a party being the subject of an investigation.''); Edison Electric Institute, Post-Technical Conference Comments, Docket No. AD17–12–000, at 5 (filed July 31, 2017) (''Despite [the *Policy Statement*], as indicated during the technical conference, there is a perceived regulatory risk associated with transaction reporting and a concern that it will invite costly audits and enforcement actions even for inadvertent errors.'').

[18] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[19] 18 CFR 380.4.

[20] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

[21] 5 U.S.C. 601–612.

[22] 13 CFR 121.201 (2020), sector 22 (Utilities), NAICS codes 221210 (Natural Gas Distribution) and 221122 (Electric Power Distribution).

on this proposal are not required to serve copies of their comments on other commenters.

VI. Document Availability

22. The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020.

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

24. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Clements is not participating.

Dated: December 17, 2020.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission is proposing to amend parts 35 and 284, chapter I, title 18, Code of Federal Regulations, as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Revise § 35.41(c) to read as follows:

§ 35.41 Market behavior rules.

* * * * *

(c) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement,* issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. For a Seller who reports in a manner consistent with procedures set forth in the *Policy Statement,* there will be a rebuttable presumption that information submitted to publishers of electricity or natural gas indices is accurate, timely, and submitted in good faith. Inadvertent reporting errors by a Seller who reports in a manner consistent with the procedures set forth in the *Policy Statement* shall not constitute violations of this provision. Seller must identify as part of its Electric Quarterly Report filing requirement in § 35.10b of this chapter the publishers of electricity and natural gas indices to which it reports its transactions. In addition, Seller must adhere to any other standards and requirements for price reporting as the Commission may order.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 3. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 4. Revise § 284.288(a) to read as follows:

§ 284.288 Code of conduct for unbundled sales service.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement,* issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. For a Seller who reports in a manner consistent with procedures set forth in the *Policy Statement,* there will be a rebuttable presumption that information submitted to publishers of electricity or natural gas indices is accurate, timely, and submitted in good faith. Inadvertent reporting errors by a Seller who reports in a manner consistent with the procedures set forth in the *Policy Statement* shall not constitute violations of this provision. Seller must notify the Commission as part of its FERC Form No. 552 annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. In addition, Seller must adhere to any other standards and requirements for price reporting as the Commission may order.

* * * * *

■ 5. Revise § 284.403(a) to read as follows:

§ 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement,* issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. For a Seller who reports in a manner consistent with procedures set forth in the *Policy Statement,* there will be a rebuttable presumption that information submitted to publishers of electricity or natural gas indices is accurate, timely, and submitted in good faith. Inadvertent reporting errors by a Seller who reports in a manner consistent with the procedures set forth in the *Policy Statement* shall not constitute violations of this provision. Seller must notify the Commission as part of its FERC Form No. 552 annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. In addition, Seller must adhere to any other standards and requirements for price reporting as the Commission may order.

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[FR Doc. 2020–28386 Filed 3–1–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2021–OSERS–0003]

Proposed Priority and Requirements—Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are DeafBlind Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The U.S. Department of Education (Department) proposes a priority and requirements for the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are DeafBlind program, Assistance Listing Number 84.160D. The Department may use the priority and requirements for competitions in fiscal year 2021 and later years. We take this action to provide training to working interpreters in order to develop a new skill area or enhance an existing skill area.

DATES: We must receive your comments on or before April 1, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov*'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and requirements, address them to Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5094, Potomac Center Plaza, Washington, DC 20202–2800.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5094, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6103. Email: *Kristen.Rhinehart@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the notice of final priority and requirements, we urge you to identify clearly the specific section of the proposed priority and requirements that each comment addresses.

In addition to your general comments and recommended clarifications, we seek input on the proposed design of the training. We are particularly interested in your feedback on the following questions:

1. Do the four specialty areas identified in the proposed priority meet the current needs in the field of interpreting for individuals who are deaf, hard of hearing, or DeafBlind? Are there other specialty areas that should be considered? If so, please provide information to demonstrate need and explain why.

2. Are there challenges to providing an induction experience for all participants as a requirement for successfully completing the program? For example, is there a limited number of potential induction opportunities that might be available for participants? If so, please provide information to describe any challenges and options for how induction opportunities may be reasonably incorporated into the training program.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priority and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov*. Due to the COVID–19 pandemic, the Department buildings are currently not open. However, upon reopening, you may also inspect the comments in person in Room 5059, 550 12th Street SW, Washington, DC, between the hours of 9:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: Under the Rehabilitation Act of 1973, as amended (Rehabilitation Act), the Rehabilitation Services Administration (RSA) makes grants to public and private nonprofit agencies and organizations, including institutions of higher education, to establish interpreter training programs or to provide financial assistance for ongoing interpreter programs to train a sufficient number of qualified professionals (as defined in 34 CFR 396.4) throughout the country.

The purpose of the program is to train interpreters to effectively interpret and transliterate using spoken, visual, and tactile modes of communication; ensure the maintenance of the interpreting skills of qualified interpreters; and provide opportunities for interpreters to raise their skill level in order to meet the highest standards approved by certifying associations and to effectively meet the communication needs of individuals who are deaf or hard of hearing and individuals who are DeafBlind.

Program Authority: 29 U.S.C. 709(c) and 772(a) and (f).

Proposed Priority: This notice contains one proposed priority.

Interpreter Training in Specialty Areas

Background

The Department has long been committed to improving the delivery of vocational rehabilitation (VR) services to, and the employment outcomes of, individuals with disabilities who are

deaf, hard of hearing, or DeafBlind [1] and has funded interpreter training projects since 1974. In 2016, the Department funded four national projects to provide specialized training in the areas of dysfluent language competencies, behavioral health interpreting, pro-tactile American Sign Language (ASL), and preparing interpreters, especially those from communities of color and heritage signing backgrounds, to work in legal settings. The Department also funded a national project to provide experiential learning to novice interpreters and reduce the length of time between graduation and certification. Information about the 2016 interpreter training projects may be accessed through the Rehabilitation Services Administration's National Clearinghouse of Rehabilitation Training Materials (NCRTM) at *ncrtm.ed.gov.*

Further, the Rehabilitation Act continues to support the communication needs of individuals who are deaf, hard of hearing, or DeafBlind. The Rehabilitation Act requires that the State Plan establish and maintain minimum standards to ensure the availability of personnel within the designated State unit, to the maximum extent feasible, trained to communicate in the native language or mode of communication of an applicant or eligible individual (section 101(7)(C)). When this is not possible, such as for individuals who are deaf, hard of hearing, or DeafBlind, the services of interpreters trained to communicate using the native language or mode of communication of an applicant or eligible individual are used. Section 302(f) of the Rehabilitation Act addresses the need for providing interpreting services for individuals who are deaf, hard of hearing, or DeafBlind by authorizing grants for the training of interpreters.

To continue to effectively meet the communication needs of individuals who are deaf, hard of hearing, or DeafBlind, the Department proposes a priority to provide training to working interpreters (*i.e.,* interpreters with a baccalaureate degree in ASL-English who possess a minimum of three years of relevant experience as an interpreter) in one of four specialty areas. This priority focuses on preparing interpreters to work in VR settings. According to the RSA–911,[2] in program year (PY) 2019, 7.43 percent (64,860) of all VR participants (872,643) were deaf, hard of hearing, or DeafBlind. Specifically, 2.6 percent were deaf, 4.68 percent were hard of hearing, and 0.15 percent were DeafBlind. The RSA–911 data show that interpreter services were used by 1,404 VR participants who achieved competitive integrated employment (CIE) outcomes in PY 2019, including 1,144 participants who are deaf, 231 participants who are hard of hearing, and 29 participants who are DeafBlind.

Interpreter training in specific specialty areas is necessary to meet the ongoing and diverse needs of individuals who are deaf, hard of hearing, and DeafBlind. A 2015 Trends Survey documented 47 percent of service providers reporting an increase in the number of deaf individuals pursuing education or employment in specialized fields (Schafer and Cokely, 2016). Interpreters must be able to understand and communicate proficiently using technical vocabulary and highly specialized discourse in a variety of complex specialty areas in both ASL and English.

In order to effectively train working interpreters in specific specialty areas, we propose a priority that incorporates high-quality remote learning,[3] field induction, mentorship, and coaching. Unlike spoken language majors, which often include a semester or year-long study abroad experience, many interpreting majors do not offer immersion opportunities. Classroom instruction alone is inadequate, and meaningful program interaction with diverse communities of deaf people is missing from most programs (Cokely and Cogen, 2015).

Experiential learning theory, a learning style first introduced by David Kolb in 1984, describes the value of learning through experience and meaningful program interaction, such as induction, mentorship, and coaching (Bentley-Sassaman, 2014). Working interpreters can apply Kolb's experiential learning theory to enhance their professional growth and skills. Under Kolb's approach, there are four key abilities that create an effective learning cycle. These abilities include concrete experience (CE), reflective observation (RO), abstract conceptualization (AC), and active experimentation (AE). To achieve CE, working interpreters must involve themselves fully, openly, and without bias in new experiences. To achieve RO, working interpreters must reflect on and observe their experiences from many perspectives. To achieve AC, working interpreters must create concepts that integrate their observations into logically sound theories. Lastly, to achieve AE, working interpreters must use these theories to make decisions and solve problems (Bentley-Sassaman, 2014).

According to Bentley-Sassaman (2014), the majority of learning for ASL-English interpreters takes place in the field, where they have hands-on experiences and the guidance of a mentor. Mentoring refines skills development through observation and reflection and builds on the experiential learning component. Under a mentor's supervision, students have the opportunity to apply foundational knowledge and then gather feedback from their mentor and apply it to their next activity or interpretation assignment.

Through the proposed priority, the Secretary intends to award one national project in each of the following specialty areas: (1) Increasing skills of novice interpreters, (2) trilingual interpreting (including Spanish) (*i.e.,* language fluency in first, second, and third languages with one of the three languages being ASL), and (3) advanced skills for working interpreters. In addition, the Secretary intends to award four national projects in a fourth specialty area, a field-initiated project.

With respect to Specialty Area (1) (increasing skills for novice interpreters), according to the National Interpreter Education Center (NIEC), challenges facing interpreter training and education programs are prevalent. In 2015, NIEC conducted a study to examine the disconnect between interpreter education and work-readiness (Cogen and Cokely, 2015). Its findings suggest that interpreter training and education programs have, in many instances, failed to produce ASL-fluent graduates. Graduates are generally unable to understand the English message and interpret it accurately from spoken English to ASL and from ASL to spoken English in a manner that is fluent and matches the source message in content, tone, and register.

Data gathered from the 2015 NIEC trends survey and two needs assessments revealed that newly graduated interpreters have a limited

[1] ''Individual who is deaf,'' ''individual who is hard of hearing,'' and ''individual who is deaf-blind'' are defined in 34 CFR 396.4.

[2] RSA uses data collected through the Case Service Report (RSA–911) (OMB control number 1820–0508) for the State VR Services Program and the State Supported Employment (SE) Services Program to describe the performance of the VR and SE programs in the Annual Report to the Congress and the President as required by sections 13 and 101(a)(10) of the Rehabilitation Act.

[3] Remote learning means programming where at least part of the learning occurs away from the physical building in a manner that addresses a learner's educational needs. Remote learning may include online, hybrid/blended learning, or non-technology-based learning (*e.g.,* lab kits, project supplies, paper packets). 85 FR 86550 (December 30, 2020)

working ability to communicate in ASL and that the gap between interpreter graduation and readiness to work continues to grow. Furthermore, trends survey data suggests that recent graduates from interpreter education programs do not have access to structured post-graduation pathways, which threatens work-readiness and puts interpreters and their future consumers at an increased risk (Cogen and Cokely, 2015).

With respect to Specialty Area (2) (trilingual interpreting (including Spanish)), in 2015, the Census Bureau estimated that over 60 million U.S. residents speak a language other than English at home. In a 2018 study, the University of Texas at Austin examined 60 interpreter training programs (ITPs) across nine States and one territory, with 31 programs responding, to examine the incorporation of curricula focused on Spanish language within interpreter settings in the U.S. (Quinto-Pozos et al., 2018). The study revealed that 90 percent of interpreter training program students were from non-English speaking homes, 88 percent of whom were from Spanish speaking homes. Only 32 percent of respondents indicated that their ITP contained content and training on interpreting in settings where languages other than ASL and English are used. None of the ITPs surveyed offered certificates or degree programs specifically focused on languages other than ASL or English.

The National Consortium for Interpreter Education Centers (NCIEC), funded by the Department, developed curricula for professional development in Spanish-influenced settings, and the National Multicultural Interpreter Program (NMIP) created curriculum for interpreters in multicultural and multilingual settings (Quinto-Pozos et al., 2018). The NCIEC and NMIP curricula are publicly available and free of cost. Survey results from the University of Texas at Austin indicated that only 45 percent of ITPs reported using NCIEC curricula, and only 33 percent of ITPs reported using NMIP curriculum, respectively. Despite the accessibility of the curricula, only a minority of ITPs currently incorporate the content into their programs. We also believe there may be parts of the country where multiple languages are spoken by deaf individuals and individuals who are hard of hearing. Therefore, applicants may address multiple language combinations in their proposals.

With respect to Specialty Area (3) (advanced skills for working interpreters), it is crucial for interpreters to continue to improve their working knowledge and skills and stay up to date on ethical considerations in interpreting. According to the RSA–911 data, in program year (PY) 2019 employment outcomes for individuals who are deaf, hard of hearing, and DeafBlind were 60 percent, 82 percent, and 47 percent, respectively. Employment outcomes for the overall population of individuals receiving VR services was 43 percent in PY 2019. As employment possibilities and opportunities for individuals who are deaf, hard of hearing, and DeafBlind grow, more individuals are pursuing advanced degrees and working in specialized professions. Cogen and Cokely (2015) documented a notable increase in individuals who are deaf or hard of hearing and are pursuing careers in specialized areas such as law, medicine, engineering, and high-tech industry. For this reason, interpreters with advanced skills and knowledge of highly specialized terminology, discourse, and emerging areas of ASL are needed. Currently, it is difficult to find interpreters who have the knowledge and linguistic range in both English and ASL to interpret in highly specialized areas. The 2015 NIEC trends survey indicated that 87 percent of respondents found it difficult to find qualified interpreters (Schafer and Cokely, 2016). Furthermore, interpreters working in advanced and specialized professions must be trained and competent in ethical considerations of advanced study and specialized professions.

With respect to Specialty Area (4) (field initiated), projects must be designed to develop training for interpreters in areas where no training currently exists, where the existing training is no longer current or relevant, or to enhance training in an area that has received increased emphasis under the Rehabilitation Act. Field-initiated topics that would not be eligible under this proposed priority and requirements include, for example, topics focusing on educational interpreting for pre-kindergarten (pre-k) to grade 12 students and other topics that are not related to interpreting for individuals receiving VR services. While there is emphasis in the Workforce Innovation and Opportunity Act (WIOA) on providing services and support to transition-age youth, the purpose of this program is to train interpreters to serve consumers in the rehabilitation process. The Department has other resources to support programs preparing pre-K to grade 12 personnel, including, for example, grant awards under the Individuals with Disabilities Education Act Personnel Preparation in Special Education, Early Intervention, and Related Services program, which includes funding to train personnel who serve school-age children with low incidence disabilities, such as visual impairments, hearing impairments, and simultaneous visual and hearing impairments.

Under Specialty Area (4), the Department's interest is in, but is not limited to, the following topic areas:

Topic area (a) (interpreting in healthcare including interpreting for hard-to-serve populations) would address the increased need for interpreters within medical, behavioral, and mental health settings as well as settings where domestic violence or substance abuse issues are present. Individuals who are deaf, hard of hearing, and DeafBlind need access to both interpreting services and qualified interpreters trained in specialized medical settings. In the 2015 NCIEC Trends Report, 89 percent of respondents indicated that it is ''somewhat'' to ''very difficult'' to find interpreters who have the skills, knowledge, and training to effectively serve individuals with mental health concerns (Cogen and Cokely, 2015).

In 2009, a comparison report was developed reflecting a deaf consumer needs assessment from two composite groups (Cokely and Winston, 2009). Data was collected through 1,250 electronic surveys from deaf consumers through the National Association for the Deaf (NAD). Data was also collected through focus group and interview sessions with 61 individual consumers not typically associated with NAD membership. In both composite groups, the highest number of respondents identified ''health'' settings as the most difficult, as well as the most important, for securing interpreting services. Cokely and Winston (2009) explain the need to better understand health-related sub-settings and the various factors that make it difficult to attain interpreter services in those settings so access to both interpreting services and qualified interpreters may be increased.

Topic area (b) (interpreting for individuals who are DeafBlind) would build upon the 2016 grant to train interpreters to meet the growing needs of individuals who are DeafBlind and increase their autonomy and self-determination. Techniques for interpreting for individuals who are DeafBlind include, print on palm (POP), tactile sign language, tracking, tactile fingerspelling, Tadoma, pro-tactile American sign language (PTASL), and others. Interpreting for individuals who are DeafBlind is a skilled practice that

requires the expansion of the typical interpreter role. Qualified DeafBlind interpreters provide visual environmental information, modify the signing space, manage the distance between consumer and interpreter, regulate pacing, and understand the importance of appropriate clothing in accommodating individuals who are DeafBlind (Interpreter Resources, 2020). As of 2018, there were approximately 150 Interpreter Training Programs in the United States, only six of which offered coursework dedicated to DeafBlind interpreting (DeafBlind Interpreting, 2018). The lack of learning opportunities has yielded a very limited pool of interpreters with expertise in this specialization. Most ITP students exit educational programs with limited or no skills in the specialization (DeafBlind Interpreting, 2018). A grant under this topic area could focus on any one of the stated techniques for interpreting for individuals who are DeafBlind.

Topic area (c) (atypical language interpreting) would build on the 2016 grant to improve services for individuals who are not skilled users of ASL. At the time of this notice, 31 working interpreters have completed the program of study and induction, another 19 have completed training, and 18 are engaged in induction. To date, 3,304 working interpreters enrolled in self-directed training with 1,121 having successfully completed at least one of the four modules. There is also a need to expand such services to the senior deaf population who may use older signs or suffer from dementia, and to individuals from foreign countries who do not yet use ASL fluently.

For topic area (d) (other topics), applicants must demonstrate the need for the training in a proposed new topic area or, in areas for which there is existing training, demonstrate that the existing training is not adequately meeting the needs of interpreters working in the field of VR.

Nothing in the proposed priority and requirements would alter an applicant's or grantee's obligations to comply with nondiscrimination requirements in the U.S. Constitution and Federal civil rights laws, including nondiscrimination on the basis of race or ethnicity, among other bases.

References

Bentley-Sassaman, J. ''The Experiential Learning Theory and Interpreter Education.'' International Journal of Interpreter Education. (2014): 62–67.

Cogen, C., M.Ed., and Cokely, D. ''Preparing Interpreters for Tomorrow: Report on a Study of Emerging Trends in Interpreting and Implications for Interpreter Education.'' National Interpreter Education Center at Northeastern University. (2015).

Cokely, D. and Winston, E. ''Comparison Report. Phases I & II, Deaf Consumer Needs Assessment.'' The National Consortium of Interpreter Education Centers. (2009): 18–22.

''DeafBlind Interpreting: Toward Effective Practice.'' DeafBlind Interpreting National Training and Resource Center at Western Oregon University. (2018): 1–177.

''Interpreter Resources: Interpreters for the Deaf-Blind.'' RIT Libraries. (2020)

Quinto-Pozos, D., Martinez, M., Suarez, A., and Zech, R. ''Beyond Bilingual Programming: Interpreter Education in the U.S. Amidst Increasing Linguistic Diversity.'' International Journal of Interpreter Education. 10(1) (2018): 46–59.

Schafer, T., MPA. MIP, Center Director, and Cokely, D., Ph.D., Principal Investigator, ''Report on the National Needs Assessment Initiative New Challenges-Needed Challenges.'' National Interpreter Education Center at Northeastern University. (March 2016).

Proposed Priority

The purpose of this proposed priority is to fund projects that provide training to working interpreters in one of four specialty areas to effectively meet the communication needs of individuals who are deaf or hard of hearing and individuals who are DeafBlind receiving VR services. The projects must achieve, at a minimum, the following outcomes: An increase in the number of interpreters who are trained to work with deaf VR consumers who require specialized interpreting; and an increase in the number of interpreters trained in specialty areas who obtain or advance in employment in the areas for which they were prepared.

Application Requirements

The Department proposes the following requirements for this activity. We may apply one or more of these requirements in any year in which this activity is in effect. RSA encourages innovative approaches to meet these requirements:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will address the need for sign language interpreters in a specialty area. To address this requirement, applicants must:

(1) Present applicable data demonstrating the need for interpreters in the specialty area for which training will be developed by the project and delivered in at least three distinct, noncontiguous geographic areas, which may include the U.S. Territories;

(2) Present baseline data for the number or estimated number of working interpreters currently trained in the specialty area. In the event that an applicant proposes training in a new specialty area that does not currently exist or for which there are no baseline data, the applicant should provide an adequate explanation of the lack of reliable data and may report zero as a baseline;

(3) Explain how the project will increase the number and quality of working interpreters in a specialty area who demonstrate the necessary competencies to meet the communication needs of individuals who are deaf, hard of hearing, or DeafBlind. To meet this requirement, the applicant must—

(i) Identify competencies that working interpreters must demonstrate in order to provide high-quality services in the identified specialty area using practices that demonstrate a rationale or are based on instruction supported by evidence, when available; and

(ii) Demonstrate that the identified competencies are based on practices that demonstrate a rationale or are supported by evidence that will result in effectively meeting the communication needs of individuals who are deaf, hard of hearing, or DeafBlind.

(b) Demonstrate, in the narrative section of the application under ''Quality of Project Design,'' how the proposed project will—

(1) Develop a new training program or stand-alone modules and conduct a pilot by the end of the first year of the project. Applicants must provide justification in their application if they determine additional time may be necessary to fully develop and pilot the curricula before the end of the first year. The training program or stand-alone modules must contain remote learning (as defined in this priority) experiences that advance engagement and learning (*e.g.,* synchronous and asynchronous professional learning, professional learning networks or communities, and coaching) that could also be incorporated into an existing baccalaureate or graduate degree ASL-English (or ASL-other spoken language) program, as appropriate. Applicants may choose to award continuing education credits (CEUs) or college or master's level credits to participants in the training program. Applicants should note that while pre-service training is not the focus of this program, a variety of resources may be considered (such as available pre-service training material) that may inform, support, or strengthen the development of training for ASL-

English interpreter training in specialized areas.

(2) Deliver the training or stand-alone modules remotely to at least three distinct, noncontiguous geographic areas identified in paragraph (a)(1) of these application requirements in years two, three, four and five of the project. Applicants may also deliver in-person training, as appropriate, to support participants' application of knowledge, skills, and competencies gained through online training.

(3) Provide mentoring and coaching to participants, as needed. This may include, but is not limited to, one-on-one instruction to address specific areas identified by an advisor as needing further practice, and providing written feedback from observed interpreting situations, from deaf consumers, from trained mentors, including written feedback from mentoring sessions, and from others, as appropriate;

(4) Develop a self-directed track and make it available to the public for independent remote learning by the end of the second year of the project. Applicants must develop a curriculum guide for each module and make available relevant materials from the training program. Applicants may offer CEUs to participants who successfully complete the self-directed track;

(5) Be based on current research and make use of practices that demonstrate a rationale or are supported by promising evidence (as defined in 34 CFR 77.1). To meet this requirement, the applicant must describe—

(i) How the proposed project will incorporate current research and practices that demonstrate a rationale or are supported by promising evidence in the development and delivery of training and in the development of products and materials;

(ii) How the proposed project will ensure that working interpreters interact with individuals with disabilities who are deaf, hard of hearing, or DeafBlind and have a range of communication skills, from those with limited language skills to those with high-level, professional language skills, as appropriate.

(c) In the narrative section of the application under ''Quality of Project Services,'' the applicant must—

(1) Demonstrate how the project will ensure equal access and treatment for eligible project participants who are members of groups who have traditionally been underrepresented based on race, color, national origin, gender, age, or disability;

(2) Describe the criteria that will be used to identify applicants for participation in the program, including any pre-assessments that may be used to determine the skill, knowledge base, and competence of the working interpreter;

(3) Describe how the project will outreach [4] to working interpreters, especially working interpreters from rural areas, Indian Tribes, and traditionally underrepresented groups;

(4) Describe how the project will provide feedback, resources, and next steps to applicants who may not be accepted into the program due to insufficient skills, knowledge base, and competence;

(5) Describe the approach that will be used to enable more working interpreters to participate in and successfully complete the training program, specifically participants who need to work while in the program, have child care or elder care considerations, or live in geographically isolated areas;

(6) Describe how the project will incorporate adult learning principles and practices that demonstrate a rationale or are supported by promising evidence for adult learners;

(7) Demonstrate how the project is of sufficient scope, intensity, and duration to adequately prepare working interpreters in the identified specialty area of training. To address this requirement, the applicant must describe how—

(i) The components of the proposed project will support working interpreters' acquisition and enhancement of the competencies identified in paragraph (a)(2)(i) of these application requirements;

(ii) The components of the project will provide working interpreters opportunities to apply their content knowledge in a variety of practical settings;

(iii) The proposed project will establish induction experiences in the specialty area for participants as a requirement for completion in the training program. Applicants may determine the appropriate scope and length of time for the induction;

(8) Demonstrate how the proposed project will actively engage representation from consumers, consumer organizations, and service providers, especially State VR agencies and their partners, interpreters, interpreter educators, and individuals who are deaf, hard of hearing, or DeafBlind in all aspects of the project;

(9) Describe how the project will conduct dissemination, coordination, and communication activities. To meet this requirement, the applicant must—

(i) Disseminate information to working interpreters about training available in specialized areas and to State VR agencies and their partners, American Job Centers, and other workforce partners about how to locate specialized interpreters in their State and local areas;

(ii) Establish a state-of-the-art website or modify an existing website for communicating with participants and stakeholders and ensure that all material developed by the grant and posted on the website are accessible to individuals with disabilities in accordance with section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act, as applicable. The website must provide a central location for all material related to the project, such as reports, training curricula, audiovisual materials, webinars, communities of practice, and other relevant material developed by the grant;

(iii) Disseminate information about the project, including, but not limited to, products such as training curricula, presentations, reports, effective practices for training working interpreters in specialized areas, and other relevant information through the NCRTM;

(iv) In the final year of the budget period, ensure that all training materials have been provided to the NCRTM and the website and IT platform can be sustained, or coordinate with RSA to transition the website to the NCRTM;

(v) Establish one or more communities of practice in the specialty area of training that focuses on project activities in this priority and acts as a vehicle for communication and exchange of information among participants in the program and other relevant stakeholders;

(vi) Communicate, collaborate, and coordinate with other relevant Department-funded projects, as applicable;

(vii) Maintain ongoing communication with the RSA project officer and other RSA staff as required; and

(viii) Communicate, collaborate, and coordinate, as appropriate, with key staff in State VR agencies, such as the State Coordinators for the Deaf; State and local partner programs; consumer organizations and associations, including those that represent individuals who are deaf, hard of hearing, or DeafBlind; and relevant RSA

[4] When preparing outreach and recruitment materials, selection criteria for training programs, as well as criteria for selecting trainers employed under the grant, applicants should cast a wide net for participants of all races and not preclude participation based on race, color, or national origin.

partner organizations and associations; and

(ix) Disseminate to baccalaureate or graduate degree ASL-English programs, as well as to relevant Department-funded programs and Federal partners, as applicable, the training material and products for incorporation into existing curricula, as well as products, effective practices for training working interpreters in specialized areas, challenges and solutions, results achieved, and lessons learned. To satisfy this requirement, the grantee must develop participant guides, implementation materials, toolkits, manuals, and other relevant material for interpreter educators and others, as appropriate, to incorporate or build into existing programs.

(d) In the narrative section of the application under ''Quality of the Evaluation Plan,'' include an evaluation plan. To meet this requirement, the evaluation plan must describe—

(1) Standards and targets for measuring the effectiveness of the program;

(2) An approach for measuring knowledge, skills, and competencies before and after successful completion of training;

(3) An approach for gathering information from participants about their knowledge of VR, estimated percentage of workload interpreting for VR consumers before specialty training, and estimated percentage of workload interpreting for VR consumers who are deaf, hard of hearing, and DeafBlind after specialty training;

(4) An approach for incorporating oral and written feedback from trainers and deaf consumers, and any feedback from coaching or mentoring sessions conducted with the participants;

(5) Methodologies, including instruments, data collection methods, and analyses that will be used to evaluate the project and how the methods of evaluation will produce quantitative and qualitative data to demonstrate whether the project activities achieved their intended outcomes;

(6) Measures of progress in implementation, including the extent to which the project activities and products have reached their intended recipients, measures of intended outcomes or results in order to evaluate those activities, and how well the goals and objectives of the proposed project, as described in the logic model (as defined in 34 CFR 77.1), have been met; and how well the goals and objectives of the proposed project, as described in its logic model have been met;

(7) How the evaluation will be coordinated, implemented, and revised, as needed, during the project. The applicant must designate at least one individual with sufficient dedicated time, demonstrated experience in evaluation, and knowledge of the project to coordinate and conduct the evaluation. This may include, but is not limited to, making revisions post award in order to reflect any changes or clarifications, as needed, to the model and to the evaluation design and instrumentation with the logic model (*e.g.,* designing instruments and developing quantitative or qualitative data collections that permit collecting of progress data and assessing project outcomes);

(8) How evaluation results will be used to examine the effectiveness of the training. To address this requirement, applicants must provide an approach for determining—

(i) What practice(s) was most effective in training working interpreters in the respective specialty area; and

(ii) What practice(s) was most effective in narrowing working interpreters' skill gaps and what data demonstrates the practice(s) was effective.

(e) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment with the project from persons who are members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability;

(2) Describe any proposed consultants or contractors named in the application, their areas of expertise, and provide a rationale to demonstrate the need;

(3) Describe costs associated with technology, including, but not limited to, maintaining an online learning platform, state-of-the-art archiving and dissemination platform, and communication tools (*i.e.,* Microsoft Teams, Zoom, Google, Amazon Chime, Skype, etc.) ensuring all products and services are accessible to individuals with disabilities in accordance with section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act, as applicable, including costs associated with captioning and transcription services, and cybersecurity; and

(4) The applicant and any identified partners have adequate resources to carry out the proposed activities.

(f) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how the applicant will ensure that—

(1) The project's intended outcomes, including the evaluation, will be achieved on time and within budget, through—

(i) Clearly defined responsibilities of key project personnel, consultants, and contractors, as applicable;

(ii) Procedures to track and ensure completion of the action steps, timelines, and milestones established for key project activities, requirements, and deliverables;

(iii) Internal monitoring processes to ensure that the project is being implemented in accordance with the established application and project plan; and

(iv) Internal financial management controls to ensure accurate and timely obligations, drawdowns, and reporting of grant funds, as well as monitoring contracts, in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 and the terms and conditions of the Federal award.

(2) The allocation of key project personnel, consultants, and contractors, as applicable, including levels of effort of key personnel that are appropriate and adequate to achieve the project's intended outcomes, including an assurance that key personnel will have enough availability to ensure timely communications with stakeholders and RSA;

(3) The products and services are of high quality, relevance, and usefulness, in both content and delivery;

(4) The proposed project will benefit from a diversity of perspectives; and

(5) Projects will be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws;

(g) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and short and long-term outcomes of the proposed project, and

(2) Include, in Appendix A, person-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority and Requirements

We will announce the final priority and requirements in a document in the **Federal Register**. We will determine the final priority and requirements after considering responses to the proposed priority and requirements, and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the proposed priority and requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are proposing the priority and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. The costs would include the time and effort in responding to the priority and requirements for entities that choose to respond. In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority and requirements easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business

Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are public or private nonprofit agencies and organizations, including Indian Tribes and IHEs that may apply. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority and requirements would outweigh any costs incurred by the applicant. There are very few entities that could provide the type of technical assistance required under the proposed priority and requirements. For these reasons, the proposed priority and requirements would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1995: The proposed priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1820–0018. The proposed priority and requirements do not affect the currently approved data collection.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

David Cantrell,

Deputy Director, Office of Special Education Programs. Delegated the Authority To Perform the Functions and Duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2021–04369 Filed 2–26–21; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0459; FRL–10017–93–Region 4]

Air Plan Approval; FL; Prevention of Significant Deterioration Infrastructure Elements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP), Division of Air Resources Management, to EPA on August 26, 2020. The Clean Air Act (CAA or Act) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each national ambient air quality standard (NAAQS) promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' This submission addresses certain greenhouse gas (GHG) Prevention of Significant Deterioration (PSD) permitting requirements for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) NAAQS. Additionally, EPA is proposing to convert the previous disapprovals of Florida's infrastructure SIPs related to the CAA GHG PSD permitting requirements for the above NAAQS to full approvals.

DATES: Comments must be received on or before April 1, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0459 at *www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9144. Ms. Williams can also be reached via electronic mail at *williams.pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were previously required to submit such SIPs for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS to EPA within three years of promulgation of the respective NAAQS. This action only pertains to sections 110(a)(2)(C), (D)(i)(II), and (J) as they

relate to GHG under a SIP-approved PSD permitting program.[1]

On July 30, 2012 (77 FR 44485), EPA disapproved portions of Florida's 1997 8-hour ozone infrastructure SIP submission related to GHG PSD permitting requirements under section 110(a)(2)(C) and section 110(a)(2)(J). The disapproval action was a result of Florida not submitting a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule. *See* 75 FR 31514 (June 3, 2010).

On April 3, 2013 (78 FR 19998), EPA disapproved the portion of Florida's infrastructure SIP submission for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS related to GHG PSD permitting requirements under the section 110(a)(2)(D)(i)(II) provision that prohibits emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. The Florida SIP for these two standards did not provide adequate legal authority to address the GHG PSD permitting requirements at or above the levels of emissions set forth in the June 3, 2010, GHG Tailoring Rule.

On November 1, 2013 (78 FR 65559), EPA disapproved portions of Florida's 2008 8-hour ozone infrastructure SIP submission related to GHG PSD permitting requirements under section 110(a)(2)(C), the section 110(a)(2)(D)(i)(II) provision that prohibits emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state, and section 110(a)(2)(J). The disapproval was a result of Florida not submitting a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the June 3, 2010, GHG Tailoring Rule.

In summary, for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, Florida's SIP did not address or provide adequate legal authority for the implementation of a GHG PSD program in Florida.

On May 19, 2014 (79 FR 28607), EPA approved Florida's December 19, 2013, SIP revision that amended the State's definition of ''PSD pollutant'' to provide Florida with the authority to regulate GHG under its PSD program to establish PSD applicability thresholds for GHG emissions at the same emissions thresholds and in the same timeframes as those specified by EPA in the June 3, 2010, GHG Tailoring Rule. Based on this May 19, 2014 approval, the Florida SIP addressed the GHG requirements for PSD as specified in the June 3, 2010, GHG Tailoring Rule.

II. Analysis of Florida's Submission

A. Section 110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of new major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program).

This proposed action pertains to the PSD permitting for new major sources and major modifications for the 2008 and 1997 8-hour ozone NAAQS. EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the current PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and (D)(i)(II) and (J) related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under the EPA regulations or the CAA.

FDEP's August 26, 2020, submission cited a number of SIP provisions to address the major source PSD program. Florida's authority to regulate new and modified sources to assist in the protection of air quality in attainment or unclassifiable areas is established in Chapter 62–210 and Chapter 62–212 of the Florida SIP. Under Florida's SIP, new major sources and major modifications in areas of the State designated attainment or unclassifiable for a NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements. With EPA's May 19, 2014 approval of Florida's SIP revision to address GHG under its PSD program in accordance with the GHG Tailoring Rule, Florida's SIP satisfied current CAA requirements for PSD. Therefore, EPA has made the preliminary determination that Florida's SIP and practices are adequate for PSD permitting related to GHGs for major sources and major modifications as required by section 110(a)(2)(C) for the 2008 and 1997 8-hour ozone NAAQS.

B. Section 110(a)(2)(D)(i)(I) and (II) Interstate Pollution Transport

Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1'') and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

This proposed action pertains to 110(a)(2)(D)(i)(II)—prong 3 for the 2008 8-hour ozone and the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. This requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C of title I of the CAA, or if the state contains nonattainment areas that have the potential to impact PSD in another state, a nonattainment new source review (NNSR) program.[2] A state's PSD permitting program satisfies prong 3 if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submission.

As explained in the discussion of section 110(a)(2)(C), Florida's SIP contains provisions for the State's PSD program that reflect the required structural PSD requirements to satisfy prong 3 of section 110(a)(2)(D)(i)(II). Florida addresses prong 3 for PSD

[1] See section II for a description of these CAA infrastructure SIP elements.

[2] Florida's NNSR program is not relevant to this proposed action as it is limited to the regulation of GHGs under the State's PSD program.

through Chapters 62–204, 62–210, and 62–212. EPA has made the preliminary determination that Florida's SIP and practices are adequate for interstate transport for PSD permitting of major sources and major modifications related to GHGs for the 2008 8-hour ozone and the 1997 annual and 2006 24- hour $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

C. 110(a)(2)(J) Consultation With Government Officials, Public Notification, and PSD and Visibility Protection

This element consists of four sub-elements: Consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility protection. This action pertains to the PSD element of section 110(a)(2)(J) for GHGs for the 2008 and 1997 8-hour ozone NAAQS.

With regard to the PSD element of section 110(a)(2)(J), this requirement is met when a state demonstrates in an infrastructure SIP submission that its PSD program meets all the current requirements of part C of title I of the CAA. As explained in the discussion of section 110(a)(2)(C), Florida's SIP contains provisions in Chapters 62–210 and 62–212 for the State's PSD program that reflect the relevant SIP revisions to satisfy the requirement of the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Florida's SIP is adequate for PSD permitting of major sources and major modifications related to GHGs for the 2008 and 1997 8-hour ozone NAAQS for section 110(a)(2)(J).

III. Proposed Action

EPA is proposing to approve revisions to the Florida SIP, submitted on August 26, 2020, related to sections 110(a)(2)(C), (D)(i) (prong 3), and (J) as they relate to new major sources and major modifications in areas of the State designated attainment or unclassifiable. EPA has made the preliminary determination that Florida's SIP and practices are adequate for GHG PSD permitting of major sources and major modifications related to the 2008 8-hour ozone NAAQS for sections 110(a)(2)(C), (D)(i) (prong 3), and (J); the 1997 8-hour ozone NAAQS for sections 110(a)(2)(C) and (J); and the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(ii) prong 3. Consequently, EPA is proposing to convert the previous disapprovals of Florida's infrastructure SIPs related to the CAA GHG PSD permitting requirements for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS to full approvals.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: February 23, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–04059 Filed 3–1–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2020–0291, FRL 10018–07–Region 3]

Virginia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Commonwealth of Virginia's Underground Storage Tank (UST) program submitted by the Commonwealth of Virginia (Virginia or State). This action is based on EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of Virginia's state program and to incorporate by reference those provisions of Virginia's regulations and statutes that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. In the ''Rules and Regulations'' section of this issue of the **Federal Register**, EPA is approving this action by a direct final rule. If no significant negative comment is received, EPA will not take further action on this proposed rulemaking, and the direct final rule will be effective 60 days from the date of publication in this

Federal Register. If you want to comment on EPA's proposed approval of Virginia's revisions to its state UST program, you must do so at this time.

DATES: Send written comments by April 1, 2021.

ADDRESSES: Submit any comments, identified by EPA–R03–UST–2020–0291, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: uybarreta.thomas@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R03–UST–2020–0291. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The federal website *https://www.regulations.gov,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814–2953, *uybarreta.thomas@epa.gov,* RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

Diana Esher,

Acting Regional Administrator, EPA Region 3.

[FR Doc. 2021–04100 Filed 3–1–21; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[AU Docket No. 20–429; FCC 21–14; FRS 17455]

Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 108

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: In this document, the Commission announces an auction of approximately 8,300 geographic overlay licenses in the 2.5 GHz band, designated as Auction 108. This document proposes and seeks comment on auction procedures to be used for Auction 108.

DATES: Comments are due on or before May 3, 2021; and reply comments are due on or before May 17, 2021.

ADDRESSES: Interested parties may file comments or reply comments in AU Docket No. 20–429. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission strongly encourages interested parties to file comments electronically.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS at *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings in response to the Auction 108 Comment Public Notice can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, or Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.
- *Email:* We also request that a copy of all comments and reply comments be submitted electronically to the following address: *auction108@fcc.gov.*

FOR FURTHER INFORMATION CONTACT:

Auction Legal Questions: Erik Beith, (202) 418–0660, *Erik.Beith@fcc.gov,* or Daniel Habif, (202) 418–0660, *Daniel.Habif@fcc.gov.*

General Auction Questions: (717) 338–2868.

2.5 GHz Band Licensing Questions: Madelaine Maior, (202) 418–1466, *Madalaine.Maior@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice (*Auction 108 Comment Public Notice*), AU Docket No. 20–429, FCC 21–14, adopted on January 13, 2021 and released on January 13, 2021. The complete text of this document, including its attachments, is available on the Commission's website at *www.fcc.gov/auction/108* or by using the search function for AU Docket No. 20–429 on the Commission's ECFS web page at *www.fcc.gov/ecfs.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Introduction

1. By the *Auction 108 Comment Public Notice,* the Commission seeks comment on the procedures to be used for Auction 108, the auction of approximately 8,300 geographic overlay licenses in the 2.5 GHz band. The Commission seeks comment on whether to use a single-round auction format with user-defined package bidding, or a simultaneous multiple-round (SMR) auction format.

II. Licenses To Be Offered in Auction 108

2. Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band. With overlay licenses, licensees obtain the rights to geographic area licenses ''overlaid'' on top of the existing incumbent licenses, *2.5 GHz Report and Order,* 84 FR 57343, October 25, 2019. As with an ordinary flexible-use license, the overlay licensee may operate anywhere within its geographic area, subject to protecting the licensed areas (*i.e.,* circular Geographic Service Areas with a 35-mile radius) of incumbent licensees. If an incumbent licensee in a county cancels or terminates its license, then the overlay licensee obtains the rights to operate in the geographic area and on the channel of the cancelled license. An overlay licensee may clear its geographic area by purchasing the incumbent licenses, but it does not have the exclusive right to negotiate with the incumbent licensee for its spectrum rights or to purchase an incumbent license in the geographic area in which it has the overlay rights. The Commission will offer up to three blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 16.5 megahertz blocks, respectively—licensed on a county basis. Specifically, the first license block will include channels A1–A3, B1–B3, C1–C3 (49.5 megahertz); the second license block will include channels D1–D3, the J channels, and channels A4–G4 (50.5 megahertz); and the third license block will include channels G1–G3 and the relevant K channels (16.5 megahertz of contiguous spectrum and 1 megahertz of the K channels associated with the G channel group). New overlay licenses in the Educational Broadband Service (EBS) portion of the 2.5 GHz band will be issued for 10-year, renewable license terms. A licensee in this band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in 47 CFR 2.106.

3. The specific inventory of overlay licenses available in Auction 108 will be determined by the results of the Rural Tribal Priority Window. During the Rural Tribal Priority Window, federally recognized Tribes were given the opportunity to submit applications to acquire new 2.5 GHz licenses for currently unassigned white space spectrum to provide broadband service on rural Tribal lands before the remaining unassigned spectrum is made generally available through competitive bidding. The Rural Tribal Priority Window opened on February 2, 2020, and the original deadline was extended by 30 days to close on September 2, 2020. The Commission received over 400 applications through the Rural Tribal Priority Window and the Wireless Telecommunications Bureau (WTB) has already granted over 150 of these applications. Based on review of applications received in the Rural Tribal Priority Window, the Office of Economics and Analytics (OEA), in conjunction with WTB, will release a public notice announcing the final inventory of 2.5 GHz band overlay licenses to be offered in Auction 108. This public notice will be released in advance of the deadline for the submission of short-form applications to bid in Auction 108 so that potential applicants can make informed decisions about whether to apply in light of information as to existing incumbents and potential Tribal licensees. Commission staff aims to process all pending Rural Tribal Priority Window applications prior to announcing the final auction inventory; however, there may be Tribal applications that remain pending at the time the auction inventory is announced. Potential bidders in Auction 108 should continue to investigate all factors that may affect each license on which they seek to bid throughout the auction process, including potential encumbrances that may result from pending Tribal applications.

4. Concurrent with the release of the *Auction 108 Comment Public Notice,* OEA and WTB have made available a file listing all county and frequency block combinations potentially available for Auction 108, subject to the results of the ongoing review of applications submitted during the Rural Tribal Priority Window. This file is listed as an ''Attachment A'' file on the Auction 108 website at *www.fcc.gov/auction/108.* The file listing available county and frequency block combinations does not include blocks or counties that are fully encumbered by existing licenses.

5. OEA and WTB will also make available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the band prior to the release of the public notice announcing the final auction inventory. In addition to existing incumbents in the band, the pending Rural Tribal Priority Window applications represent the maximum potential additional encumbrances that may affect the licenses available in the auction. These resources will include a mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications in the Commission's Universal Licensing System (ULS) database. The mapping tool will be updated to reflect changes due to the grant or dismissal of any pending Tribal applications prior to the auction. Potential applicants are reminded, however, that this tool will not represent complete licensing information; all information should be confirmed in ULS for any specific license or area. More information about Rural Tribal Priority Window applications, including a current mapping tool to help identify the location of pending, accepted for filing, and granted applications, is available at *www.fcc.gov/rural-tribal-window-updates.* The licensing information provided on this web page does not represent complete licensing information. All information should be confirmed in ULS for any specific license or area.

6. Notwithstanding Commission resources described in the *Auction 108 Comment Public Notice,* each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 108, including the availability of unassigned white space in any particular market. In addition to the typical due diligence considerations that the Commission encourages of bidders in all auctions, the Commission calls particular attention in Auction 108 to potential encumbrances due to existing licenses and the Rural Tribal Priority Window issues described above, which may impact the licenses available in Auction 108. Each applicant should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 2.5 GHz band. The Commission makes no representations or warranties about the use of this spectrum for particular services, or about the information in Commission databases that is furnished by outside parties. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

III. Implementation of Part 1 Competitive Bidding Procedures

7. In the *2.5 GHz Report and Order,* the Commission decided to conduct any auction of new 2.5 GHz band licenses in conformity with the amended part 1 rules. The Commission's part 1 rules require each applicant seeking to bid to acquire licenses in a spectrum auction to provide certain information in a short-form application (FCC Form 175), including ownership details and numerous certifications. Part 1, subpart Q's, competitive bidding rules also contain a framework for the implementation of a competitive bidding design, application and certification procedures, reporting requirements, and the prohibition of certain communications. The rules and requirements proposed in this section would apply in either a single bidding round auction or an SMR auction, unless clearly indicated otherwise.

A. Certification of Notice of Auction 108 Requirements and Procedures

8. In addition to the certifications already required under 47 CFR 1.2105, the Commission proposes to require any applicant seeking to participate in Auction 108 to certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 108 that will be released in advance of the short-form deadline, and that it has familiarized itself with those procedures and the requirements for obtaining a license and operating facilities in the 2.5 GHz band. The Commission believes that this requirement would help ensure that the applicant has reviewed the procedures for participation in the auction process and has investigated and evaluated those technical and marketplace factors that may have a bearing on its potential use of any licenses won at auction. Consequently, this requirement will promote an applicant's successful participation and will minimize its risk of defaulting on its auction obligations. As with other required certifications, an auction applicant's failure to make the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice. The Commission seeks comment on this proposal. The Commission also seeks comment on whether there are additional steps it should take with respect to the filing of short-form applications to further ensure and promote auction integrity.

B. Bidding Credit Caps

9. Consistent with the Commission's decisions in the *Updating Part 1 Report and Order,* 80 FR 56764, September 18, 2015, the Commission seeks comment on establishing reasonable caps on the total bidding credit amount that an eligible small business, very small business, or rural service provider may be awarded for Auction 108. The Commission administers its bidding credit programs to promote small business and rural service provider participation in auctions and in the provision of spectrum-based services.

10. Eligibility for the small business bidding credit is determined according to a tiered schedule of small business size definitions that are based on an applicant's average annual gross revenues for the relevant preceding period, and which determine the size of the bidding credit discount. In the *2.5 GHz Report and Order,* the Commission determined that eligibility for the small business bidding credit in auctions of new licenses in the 2.5 GHz band would be defined using two of the thresholds of the standardized schedule of small business sizes. Specifically, the Commission determined that an entity with average annual gross revenues for the preceding five years not exceeding $55 million would be designated as a ''small business'' eligible for a 15% bidding credit, and that an entity with average annual gross revenues for the preceding five years not exceeding $20 million would be designated as a ''very small business'' eligible for a 25% bidding credit. The Commission further determined that entities providing commercial communication services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas would be eligible for the 15% rural service provider bidding credit. The Commission defined ''rural area'' as a county with a population density of 100 persons or fewer per square mile.

11. To protect the integrity of the bidding credit program and to mitigate the incentives for abuse, the Commission, in the *Updating Part 1 Report and Order,* established a process to implement a reasonable cap on the total bidding credit amount that an eligible small business or rural service provider may be awarded in any auction, based on an evaluation of the expected capital requirements presented by the particular service and inventory of licenses being auctioned. The Commission determined that bidding credit caps would be implemented on an auction-by-auction basis, but resolved that, for any particular auction, the total amount of the bidding credit cap for small businesses would not be less than $25 million, and the bidding credit cap for rural service providers would not be less than $10 million. For Auctions 101–103, 105, and 107, the Commission adopted a $25 million cap on the total bidding credit amount that may be awarded to an eligible small business in each auction and a $10 million cap on rural service provider bidding credits in each auction.

12. The Commission proposes to adopt the same bidding credit caps for Auction 108. As the Commission did for its recent auctions of spectrum for next-generation wireless services, it believes that the range of potential use cases suitable for spectrum in the 2.5 GHz band, combined with the relatively small geographic areas for new flexible-use overlay licenses of white space, may permit deployment of smaller-scale networks with lower total costs. Moreover, past auction data suggest that the proposed caps will allow the substantial majority of eligible businesses in the auction to take advantage of the bidding credit program. The Commission therefore believes that its proposed caps will promote the statutory goals of providing meaningful opportunities for bona fide small businesses to participate in the auction and in the provision of spectrum-based services, without compromising its responsibility to prevent unjust enrichment and ensure efficient and intensive use of spectrum.

13. Similarly, the Commission proposes to adopt a $10 million cap on the total bidding credit amount that may be awarded to an eligible rural service provider in Auction 108. An entity is not eligible for a rural service provider bidding credit if it has already claimed a small business bidding credit. Based on its experience with other spectrum auctions, the Commission anticipates that a $10 million cap on rural service provider bidding credits will not constrain the ability of any rural service provider to participate fully and fairly in Auction 108. In addition, to create parity in Auction 108 among eligible small businesses and rural service providers competing against each other in smaller markets, the Commission proposes a $10 million cap on the overall bidding credit amount that any winning small business bidder may apply to licenses won in counties located within any partial economic area (PEA) with a population of 500,000 or less.

14. The Commission seeks comment on these proposed caps. Specifically, do the expected capital requirements

associated with operating in the 2.5 GHz band, the potential number and value of new overlay licenses, past auction data, or any other considerations justify a higher cap for either type of bidding credit? Moreover, are there convincing reasons for not maintaining parity with the bidding credit caps adopted in previous auctions of spectrum suitable for 5G? Commenters are encouraged to identify unique circumstances and characteristics of this mid-band auction that should guide us in establishing bidding credit caps, and to provide specific, data-driven arguments in support of their proposals.

15. The Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding de jure and de facto control of such applicants. These rules include a prohibition, which applies to all applicants (whether or not they are seeking bidding credits) starting at the short-form application filing deadline, against changes in ownership of the applicant that would constitute an assignment or transfer of control. Under 47 CFR 1.2107(c), the winning bidder must be the entity that files the post-auction long-form application. Pursuant to 47 CFR 1.929(a)(2), any substantial change in ownership or control of an applicant is classified as a major amendment. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements. This policy will help to ensure compliance with the Commission's rules applicable to the award of bidding credits prior to the start of bidding in this auction, which will involve competing bids from those who do and do not seek bidding credits, and thus preserves the integrity of the auction process. In furtherance of this policy, applicants will not be permitted to change their bidding credit type selection (*i.e.,* from small business to rural service provider, or vice versa) after the short-form deadline. The Commission also believes that this will meet its objectives in awarding licenses through the competitive bidding process.

C. Prohibition of Certain Communications

16. Section 1.2105(c)(1) of the Commission's rules, 47 CFR 1.2105(c)(1), provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline. Section 1.2105(c)(5)(i), 47 CFR 1.2105(c)(5)(i), defines ''applicant'' as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10% or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

17. *Nationwide Providers Subject to the Prohibition of Certain Communications.* The operation of the rule prohibiting certain communications requires that the Commission identify each ''nationwide provider'' for purposes of § 1.2105(c)(1) in connection with each auction. Accordingly, consistent with the procedures adopted for prior auctions of flexible-use licenses for advanced wireless services, the Commission proposes to identify AT&T, T-Mobile, and Verizon as ''nationwide providers'' for the purpose of implementing its competitive bidding rules in Auction 108, including § 1.2105(c), the rule prohibiting certain communications. This is consistent with the Commission's identification of nationwide providers in the *2020 Communications Marketplace Report.* The Commission seeks comment on this proposal.

D. Information Procedures During the Auction Process

18. As an additional safeguard to further prevent the sharing of information about applicants' bids and bidding strategies and to discourage unproductive and anti-competitive strategic behavior, the Commission proposes to limit information available in Auction 108 in order to prevent the identification of bidders placing particular bids until after the bidding has closed. The Commission has instituted limited information procedures in most recent spectrum auctions. While the Commission generally makes available to the public information provided in each applicant's FCC Form 175 following an initial review by Commission staff, it proposes to not make public until after bidding has closed: (1) The licenses that an applicant selects for bidding in its FCC Form 175, (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

19. As in past Commission auctions, the Commission will not make public during a bidding round any real-time information on bidding activity. Bidders would have access both during and after a round to information related to their own bidding activity and eligibility. For example, bidders would be able to view their own levels of eligibility and submitted activity through the FCC auction bidding system.

20. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related information would be made publicly available.

21. The Commission seeks comment on the above details of its proposal for implementing limited information procedures, or anonymous bidding, in Auction 108. Commenters opposing the use of limited information procedures in Auction 108 should explain their reasoning and propose alternative information rules.

E. Upfront Payments and Bidding Eligibility

22. In keeping with the Commission's usual practice in spectrum license auctions, the Commission proposes that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid. As described below, the upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on licenses. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. The Commission notes that its rules require that any auction applicant that, pursuant to 47 CFR 1.2106(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50% more than the amount that otherwise would be required. With these considerations in

mind, the Commission proposes upfront payments based on $0.003 per MHz-pop, with a minimum of $500 per license. Given the uncertain total amount of available white space spectrum in each 2.5 GHz band license pending resolution of Rural Tribal Priority Window applications and other factors, the Commission proposes to base upfront payments on the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block. For the 49.5 megahertz and 50.5 megahertz blocks, the Commission proposes to base the calculation on 50 megahertz. Additionally, when calculating upfront payment amounts, the Commission proposes to round the results of calculations as follows: Results below $1,000 will be rounded down to the nearest $100; results between $1,000 and $10,000 will be rounded down to the nearest $1,000; results between $10,000 and $100,000 will be rounded down to the nearest $10,000; and results above $100,000 will be rounded down to the nearest $100,000. The proposed rounding procedures would lessen the differences between upfront payment amounts for licenses in counties with similar population instead of reflecting relatively small differences in total potential MHz-pops that are not necessarily representative of the available white space.

23. The Commission seeks comment on these upfront payment amounts, which are specified in the Attachment A file on the Auction 108 website at *www.fcc.gov/auction/108.* If commenters believe that these upfront payment amounts are not reasonable amounts, they should explain their reasoning and suggest an alternative approach.

24. The Commission further proposes that the amount of the upfront payment submitted by a bidder would determine its bidding eligibility in bidding units, which are a measure of bidder eligibility and bidding activity. The upfront payment does not limit the dollar amounts of the bids that a bidder may submit. The Commission proposes to assign each license that is available to be assigned a specific number of bidding units, equal to one bidding unit per $100 of the upfront payment listed in the Attachment A file. The number of bidding units for a given license is fixed and does not change during the auction.

25. *Calculating Upfront Payments in the Single-Round Format.* To the extent that a bidder wishes to bid on multiple licenses simultaneously, it would need to ensure that its upfront payment provides enough eligibility to cover the total bidding units associated with the licenses that the bidder can win given the bids it intends to submit. Under the single-round approach, a bidder's upfront payment would not be attributed to specific licenses. A bidder may place bids on multiple licenses consistent with its selections in its FCC Form 175, provided that the maximum number of bidding units associated with the licenses that the bidder can win does not exceed its bidding eligibility. Thus, in calculating its upfront payment amount, and hence its bidding eligibility, an applicant must determine the maximum number of bidding units needed to cover licenses that it may wish to win in the auction and submit an upfront payment amount covering that total number of bidding units. The Commission seeks comment on these procedures.

26. *Calculating Upfront Payments in the SMR Format.* If the Commission adopts the SMR auction format discussed below, a bidder that wishes to bid on multiple licenses simultaneously similarly would need to ensure that its upfront payment provides enough eligibility. A bidder would be able to place bids on multiple licenses, provided that the total number of bidding units associated with those licenses does not exceed its current eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility under this approach, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Commission seeks comment on this approach to upfront payments under an SMR auction format.

F. Auction Delay, Suspension, or Cancellation

27. For Auction 108, the Commission proposes that, at any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in Auction 108 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such a case, OEA would notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, OEA, in its sole discretion, may elect to resume the auction starting from the beginning of the round, or it may cancel the auction in its entirety (subject to the scheduling in due course of another auction for this spectrum). The Commission emphasizes that OEA and WTB would exercise the authority to delay, suspend, or cancel bidding in Auction 108 solely at their discretion. The Commission seeks comment on this proposal.

G. Additional Default Payment Percentage

28. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

29. The Commission's rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment. The level of this additional payment in each auction will be based on the nature of the service and the licenses being offered.

30. For Auction 108, the Commission proposes to establish an additional default payment of 15%, which is consistent with that adopted for prior auctions of spectrum suitable for 5G and other advanced wireless services. As noted in the *Commercial Spectrum Enhancement Act (CSEA)/Part 1 Report and Order,* 71 FR 6214, February 7, 2006, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to 20% will be more effective in deterring defaults than the 3% used in some earlier auctions. At the same time, the Commission does not believe the detrimental effects of any defaults in Auction 108 are likely to be unusually great. In light of these considerations, the Commission proposes for Auction 108 an additional default payment of 15% of the relevant bid. The Commission seeks comment on this proposal.

IV. Proposed Bidding Procedures

31. The Commission proposes to conduct Auction 108 using either a single bidding round, after which the auction system will process the bids to determine winning bidders, or a simultaneous multiple-round ascending (SMR) auction format. Under the single-round format, winning bidders would pay the amounts of their winning bids for the licenses they are awarded (less any applicable bidding credit discount). The SMR auction format would offer every license for bid at the same time and consist of successive bidding rounds in which bidders may place bids on individual licenses. Under this format, bidding would remain open on all licenses until bidding stops on every license.

32. The procedures the Commission proposes for the single-round format on which it seeks comment differ from FCC spectrum auctions it has held in the past because the circumstances for Auction 108 differ in many respects from more typical spectrum auction scenarios. However, the Commission also outlines and seeks comment on SMR procedures that may be more familiar to potential auction participants.

33. The Commission notes the delegated authority of OEA to develop auctions jointly with WTB and expects that OEA and WTB will release a technical guide supplementing the information in the *Auction 108 Comment Public Notice* and including the mathematical details and algorithms of the single-round auction design. The corresponding technical information for an SMR auction is contained in the *Auction 108 Comment Public Notice.*

A. Single Bidding Round Auction Design

34. The Commission seeks comment on use of a single bidding round that would remain open long enough to give bidders ample time to submit, review and potentially resubmit, and confirm their bids. Bids submitted during the round would need to meet the activity rule. After the round closes, the submitted bids would be processed by the bidding system to determine the winning bids.

35. While this format departs from the multiple-round procedures that the Commission typically has used in auctioning spectrum licenses, the inventory of licenses available in Auction 108 will be very large (approximately 8,300 licenses) and, as a result, a multiple-round auction could require a number of months to complete. Although a clock auction of generic blocks with an assignment phase to assign frequency-specific licenses can shorten the duration of a multiple-round auction relative to the Commission's SMR auction format, a clock auction format would not be appropriate here because each overlay license being offered is unique. Within a county, each block has a different amount of bandwidth—though not all frequency blocks are available in all counties—and even where a given frequency block is available in a county, white space may not be available throughout the county due to existing incumbent licensee operations. An SMR auction could last for months, which would require participating bidders to monitor the auction consistently, a resource commitment that is demanding for all bidders, but particularly for smaller entities, many of which the Commission expects will compete in Auction 108. In addition, a longer auction entails a longer prohibited communications quiet period, in which all applicants—including but not limited to all officers and directors of the entity submitting an application and all controlling interests of that entity—are subject to the rule prohibiting certain discussions of bids or bidding strategies. Moreover, smaller entities that are seeking only a limited number of relatively low value licenses may consider such a resource commitment to be too onerous and may choose not to participate in this auction. In contrast, the Commission anticipates that, based on estimated processing time, a single bidding round giving bidders ample time to submit their bids and bid processing could be completed within a week.

36. In addition, a single-round auction format may help overcome some of the inherent advantages of incumbent rights holders in the band and increase overall competition in the auction. Specifically, the Commission seeks comment on using a single-round auction format in the context of the existing licensing and leasing landscape of the 2.5 GHz band where a single entity holds a large share of the spectrum rights. A multiple-round auction will always give a bidder an opportunity to outbid its competitors, and given that the majority license-holder in this band is a nationwide service provider and is likely to be better funded than many other entities that are potentially interested in Auction 108, these other, smaller entities may feel as though they have little chance of winning when competing against the larger license-holder. Moreover, given that the larger entity's interests are geographically broad while the smaller entities tend to have more localized interests, the larger entity would be able to ''cost-average'' by paying more for some licenses than its stand-alone valuation would otherwise indicate because it would be able to leverage savings from other licenses that it wins at less than its valuation. Other bidders, recognizing these advantages, consequently are likely to be deterred from participating in an auction where they expect that they would have little opportunity to win. Absent the participation of the smaller entities, the advantages to the majority license-holding entity would be even stronger. As a result of the diminished competition in the auction, prices may likely be lower than they would have been had the smaller entities participated. Conversely, in a single-round, pay-as-bid auction, the weak bidder has a better opportunity to win, it is more likely to participate in the auction, and prices can therefore be expected to be closer to the winning bidder's valuation. The Commission asks commenters to consider whether a single-round format would encourage greater participation in this auction than would an SMR auction. Would a smaller entity be more likely to participate if other, possibly larger entities did not always have an opportunity to place a higher bid, as is the case in a multiple-round ascending auction format?

37. The Commission recognizes that a single-round auction precludes the price discovery across licenses that is possible in a multiple-round auction. Price discovery is intended to help inform a bidder's decision to shift its resources across areas as relative prices change over the course of the auction, which is particularly helpful for a bidder with multiple alternative business plans but without sufficient resources to pursue all of them. The single-round auction on which the Commission seeks comment considers the potential losses in efficiency from the price discovery process and, on balance, finds that any losses are likely to be less consequential in this auction than is generally true for spectrum auctions. Based on input in the proceeding and the characteristics of the licenses offered in Auction 108—county-based, with non-uniform and occasionally significant encumbrances across areas, making them less suitable for larger-scale operations—it is the Commission's understanding that the majority of potential bidders in Auction 108 likely will be entities with specific local or regional interests, and therefore, they will not be hampered significantly by a lack of price discovery over multiple rounds for alternative areas. To determine their bid amounts, bidders

can incorporate information from significant secondary market activity in the 2.5 GHz band, including through auction or auction-like processes that have been used by incumbents to find interested parties and set prices, as well as data in ULS, and spectrum values from recent mid-band spectrum auctions, such as the recently-concluded Commission auction of Priority Access Licenses in the 3550–3650 MHz Band. Moreover, it has been suggested that smaller operators may have better knowledge of the local landscape and may be able to price their bids more accurately than larger entities without ties to such local rural areas.

38. The bidding procedures the Commission proposes for the single-round format include several mechanisms for ensuring that many important benefits of a multiple-round auction can be accommodated under the single-round format. Importantly, the Commission seeks comment on procedures to ensure that certain potentially critical aggregations of licenses can be bid on with an either/or indicator so that a bidder can indicate that it wishes to be assigned only one of a group of substitutable licenses. This procedure offers a useful advantage that is not feasible in a multiple-round auction where a large number of items precludes flexible package bidding. With these mechanisms, the Commission is confident that bidders can simply and effectively represent their bidding interests in a single-round format.

39. The Commission seeks comment on any specific aspects of this single-round auction with which commenters agree or disagree. In particular, do potential bidders see the time savings of a single-round auction as valuable relative to the SMR auction that could last for several months? Do commenters believe that the single-round format would disproportionately favor one group of bidders or another? Is there any reason to conclude that its understanding of the type of entities likely to participate in Auction 108 is inaccurate or unsupported by the record in the Transforming the 2.5 GHz Band proceeding, WT Docket No. 18–120?

40. Prior to the start of Auction 108, the Commission would make available to bidders various educational materials.

1. Pay-As-Bid Pricing Rule

41. Under the single-round auction format, each winning bidder would pay the sum of its winning bid amounts for the licenses it is awarded, less any applicable bidding credit discount. Accordingly, a bidder with bidding credits should bid an undiscounted (full-price) amount for the licenses it wishes to win.

42. The Commission would use a pay-as-bid payment rule to give bidders more certainty about the cost of their winning bids than would a ''second price'' payment rule, in which the winning bidder would pay a price corresponding to the next best bid or set of bids. In the simple case of an individual item and no package bids, the ''second price'' would be the second-highest bid. In the context of a combinatorial winner determination process such as the Commission proposes here, the bidding system would compare the revenue of the winning combination of bids with the highest revenue possible absent the winning bidder's bid, and subtract the difference from the winning bidder's bid to determine the second, or Vickrey, price. A pay-as-bid rule may also be useful in discouraging undesirable strategic behavior. In a second-price auction where the highest bidder would win but pay only the amount of the second-highest bid, a dominant entity may overbid on a large group of licenses if it anticipates that competing bids for most of those licenses would be considerably lower, so that expected gains would outweigh any losses. In contrast, with a pay-as-bid rule, each bidder would have to pay the amount of its high bid for each license it wins, discouraging such aggressive strategies by entities with interests in a large number of areas. Moreover, given the very large inventory of licenses offered in Auction 108, the computation of ''second prices'' (or Vickrey prices) would be exceedingly complex and potentially intractable within a reasonable amount of processing time. The determination of a single Vickrey price involves solving an additional combinatorial optimization problem, which could take a significant amount of time to solve. The Commission has computed Vickrey prices during the assignment phase of several recent spectrum clock auctions where, in each assignment phase market, the number of licenses being assigned was less by orders of magnitude and only a relatively small number of bidders were being assigned licenses.

43. Might a resource-constrained smaller bidder be more inclined to compete at auction because it has more certainty over the amount it might pay? Or might a small entity be more likely to participate because a dominant entity will have less incentive to strategically overbid than in a second-price auction? The Commission seeks comment on the use of a pay-as-bid payment rule.

2. Bidding Activity and Eligibility

44. Consistent with its proposal to determine bidding eligibility in bidding units based on the amount of a bidder's upfront payment, the Commission proposes to determine bidding activity in terms of bidding units, as well. Each license will be assigned a certain number of bidding units. For a single round of bidding, the Commission would limit a bidder's total bidding activity such that the maximum number of bidding units associated with the licenses that the bidder can win does not exceed its total eligibility in bidding units.

45. To implement this procedure, when a bidder uploads a set of bids via the internet to the FCC auction bidding system, the system would calculate the maximum bid amount and the maximum number of bidding units associated with the bids. If the bids do not exceed the bidder's eligibility and otherwise are valid bids, the bidding system would accept the bid submission. If the submitted bids exceed the bidder's eligibility, the bids would be rejected and new bids could be submitted before the close of the round. In addition, during the bidding round, the bidding system would inform the bidder of a running total of its activity in terms of bidding units and the total value of all of its submitted bids. The Commission asks for comment on these procedures.

3. Minimum Bids and Reserve Prices

46. As part of the pre-bidding process for each auction, section 309(j) of the Communications Act of 1934, as amended, mandates that the Commission prescribes methods for establishing reasonable minimum bid amounts for licenses subject to auction unless such bid amounts are not in the public interest. Accordingly, the Commission proposes to establish minimum bid amounts for Auction 108.

47. Given the potential lack of accurate information on available white space in the 2.5 GHz band, the Commission proposes to establish the minimum bid amounts in Auction 108 using the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block. The Commission proposes to base these calculations on $0.006 per MHz-pop, with a minimum of $500 per license. For the 49.5-megahertz and 50.5-megahertz blocks, the Commission proposes to base the calculation on 50 megahertz. Additionally, when calculating minimum bid amounts, the Commission proposes to round the results of calculations as follows:

Results below $1,000 will be rounded down to the nearest $100; results between $1,000 and $10,000 will be rounded down to the nearest $1,000; results between $10,000 and $100,000 will be rounded down to the nearest $10,000; and results above $100,000 will be rounded down to the nearest $100,000. The proposed rounding procedures would lessen the differences between minimum bid amounts for licenses in counties with similar population instead of reflecting relatively small differences in total potential MHz-pops that are not necessarily representative of the available white space. The Commission seeks comment on these minimum bid amounts, which are specified in the Attachment A file on the Auction 108 website at *www.fcc.gov/auction/108.* If commenters believe that these minimum bid amounts would result in unsold licenses or are not reasonable amounts, they should explain their reasoning and propose an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas for minimum bids. The Commission does not propose a separate aggregate reserve price, below which the auction would not conclude, and it seeks comment on that proposal. The Commission is not aware at this time of circumstances that require establishment of an aggregate reserve price in the public interest for this auction of overlay licenses in the 2.5 GHz band and propose only the minimum bids that it discusses here.

4. Package Bidding

48. For the single-round format, the Commission proposes a flexible form of package bidding, which would allow bidders to submit bids for packages of multiple licenses within the same county or for multiple geographic area licenses, *i.e.,* licenses covering multiple metropolitan counties within a specified geographic region.

49. *Packages of Multiple Blocks within a County.* For the single-round format, the Commission proposes to allow a bidder to submit package bids for two or three licenses in a single county, in order to give the bidder more control in this single-round auction over the number and combination of licenses that it may win. By contrast, in a multiple-round auction, a bidder has greater ability to shape the combination of licenses that it is assigned. The Commission proposes these limited package bidding procedures for the single-round format to address a bidder's need to win at least two or three blocks in a county if it wins any blocks. This would enable a bidder to ensure that if it won any licenses in a county, it would win sufficient licenses to facilitate high-bandwidth services and applications. A package bid would consist of a group of licenses and a single price that would apply to the entire group. The bidding system would determine the winning combination of licenses taking into account that all or none of the licenses in a package bid are to be assigned to the bidder.

50. For example, if a bidder is interested in winning any two license blocks in a county, but not a single license or all three licenses, it could submit three package bids for each of the two-license block combinations in the county. The bidder would be ensured of winning two licenses if it wins any of them.

51. *Packages of Multiple Metropolitan Counties.* The Commission proposes procedures to permit certain package bids that include licenses in multiple metropolitan counties, as long as the counties in a bid are within a given geographic region or area. The Commission proposes to define ''metropolitan'' for this purpose as those counties that are not subject to the small-market bidding credit cap. Counties located within any PEA with a population of 500,000 or less are subject to the small-market bidding credit cap. Thus, metropolitan counties are those located within any PEA with a population greater than 500,000.

52. For the single round format, the Commission proposes to limit an individual package bid further to include licenses only in metropolitan counties that lie within the same Major Economic Area (MEA). This limitation would enable packaging across the interdependent counties in a metropolitan market, would prevent the submission of overly broad packages, and recognizes the need to maintain bidding and computational manageability. There are 51 MEAs nationwide; MEAs are intermediate in size between Economic Areas (EAs) and Regional Economic Area Groupings (REAGs). In addition, the Commission will license Guam and the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and American Samoa, which have been assigned Commission-created MEA numbers 49–51, respectively. Therefore, a single package bid could include licenses in two or more metropolitan counties in a given MEA; the non-metropolitan counties in the MEA could be bid for only as single counties (but potentially as packages of two or three licenses in a single county). Finally, for computational reasons, the Commission proposes that the total number of package and/or individual bids that a bidder may submit involving metropolitan counties in an MEA is limited to 250. If the number of individual licenses available in the metropolitan counties in a single MEA exceeds 250, an exception to the limit would permit a bidder to submit a bid for each individual license. The Commission does not propose a limit on individual county-level bids, package or otherwise, that do not involve metropolitan counties.

53. A package bid would consist of a set of licenses in a set of counties and a single price applicable to the entire set of licenses in those counties. Within the proposed limits the Commission sets forth here, a bidder could include any combination of counties in a package—*i.e.,* packages would not be pre-defined.

54. In proposing these procedures for package bidding for the single-round format, the Commission aims to balance the needs of smaller entities with very localized interests with the requirements of entities that wish to create larger networks. Permitting packages of the licenses within a county provides a simple mechanism for a bidder to guard against winning an undesirable combination or number of licenses in a single county, which is likely to be useful to all bidders. Allowing multiple-county packages of licenses only for metropolitan areas addresses the needs of entities with larger networks to ensure that they do not win an undesired patchwork of more heavily populated areas. In such areas, counties of smaller and greater competitiveness may make winning such patchworks potentially more likely. At the same time, limiting the scope of multiple-county packages to metropolitan counties within a single MEA reduces the potential for a bidder to leverage a highly-valued aggregation in one area in order to win licenses in other areas where bidders for individual counties may be the more efficient users of those licenses. Moreover, limits on package bids help reduce complexity for the bidder and enhance computational feasibility.

55. The Commission seeks comment on these procedures to allow bidding for packages of multiple licenses within a single county and for packages of bids for multiple metropolitan counties within an MEA. The Commission asks commenters to consider how changes they suggest to these procedures might impact the different needs of the wide variety of potential bidders that may be interested in Auction 108. In particular, the Commission seeks comment on the use of MEAs as the relevant ''region'' for limiting the metropolitan counties that

can be included in a single package bid. Would a smaller aggregation, such as EAs, be more appropriate? Alternatively, would larger areas, such as REAGs be preferable? The Commission also asks commenters to address the proposed definition of ''metropolitan.'' Would an alternative definition of more heavily populated counties be simple to implement and consistent with other definitions used in this and other recent Commission spectrum auctions?

5. Either/Or Indicator

56. Because a single-round auction does not give a bidder an opportunity to move its bids from one area to another as prices change, or from one block to another within an area, as does a multiple-round auction, the Commission proposes to allow a bidder to indicate that two or more of its bids are to be treated as mutually exclusive by the bidding system when assigning winning bids. In other words, a bidder can indicate that it wants to win only one of the bids in a group of bids it specifies. For example, if a bidder is interested in winning one of the three licenses available in a county, it could submit separate bids for each of the three licenses and indicate that it wishes to win only one of them. A bidder's upfront payment amount and its activity and eligibility calculations would be based on the largest set of bids that the bidder can win taking into account that some bids may be mutually exclusive.

57. The Commission proposes that a bidder may indicate that it wants the bidding system to consider the bids in a specified group as mutually exclusive as long as either all the bids in the group involve the same non-metropolitan county or all the bids in the group involve only metropolitan counties in the same MEA. The Commission further seeks comment on allowing each bid to be included in at most one mutually exclusive group of bids. The Commission proposes these limits on either/or bids to ensure that the combinatorial optimization winner determination problem is feasible, given the extremely large number of potential combinations of bids that must be considered. A group of mutually exclusive bids can include individual and/or package bids.

58. The Commission asks commenters to consider whether these procedures to allow a bidder to use an either/or indicator to instruct the bidding system to assign only one of a specified group of bids would be helpful in managing the bidder's potential winnings if this single-round auction format is adopted.

6. Bid Processing and Winning Bids

59. To determine winning bids in the single-round format, the Commission proposes that after the single bidding round, the bidding system would use optimization software to determine the value-maximizing combination of (package and individual) bids, taking into account each bidder's mutually exclusive either/or bids. A bid of a bidder with a bidding credit would be considered in the optimization at its undiscounted bid price. In contrast, for payment purposes, the bidding credit discount for a bidder with a bidding credit will be subtracted from the bidder's total winning bids, applying any bidding credit caps, to determine its net winning bids.

60. The Commission also seeks comment on assigning each individual or package bid a pseudo-random number upon submission, such that, if there are ties among the value-maximizing combinations of bids, the bidding system would determine the winning bids by finding the set that maximizes the sum of pseudo-random numbers.

61. Because there is a very small but positive probability that the optimization software would be unable to provide an exact solution to the problem of determining the value-maximizing combination of bids within a reasonable amount of time, the Commission seeks comment on use of an ''escape clause.'' Under the proposed escape clause, if the optimization software does not yield an exact solution within 48 hours, then the winning set of bids would be determined by the best solution identified to that point. Winning bidders would pay the amounts of their winning bids, consistent with the pay-as-bid pricing rule.

62. The Commission seeks comment on these proposed bid processing procedures for this novel single-round auction with package bidding, including the tie-breaking mechanism, the escape clause generally, and the proposed 48-hour computational period.

B. Simultaneous Multiple-Round Auction Design

63. The Commission also seeks comment on using its SMR auction format for this auction. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which bidders may place bids on individual licenses. The SMR procedures on which the Commission seeks comment below are consistent with those adopted in prior Commission SMR auctions. Typically, bidding remains open on all licenses until bidding stops on every license. This format would not provide for package bidding because of the significant complexity that this would present, for both bidders and the bidding system, given that the 2.5 GHz band plan has a potential inventory of approximately 8,300 licenses.

64. The Commission has predominantly used an SMR format for spectrum auctions, and therefore this format is familiar to potential bidders that have participated in past Commission spectrum auctions. An SMR format allows price discovery, so that a bidder may observe how prices differ across areas or frequency blocks, and to modify its bidding strategies accordingly. In addition, multiple rounds of bidding may give a bidder more confidence in its bid amounts in cases where there is a significant ''common'' value element to the licenses being auctioned beyond the particular value to the bidder in its business plan.

65. The Commission seeks comment on whether using an auction design that is familiar to bidders is important in helping potential participants feel more comfortable with participating in Auction 108. The Commission also asks whether allowing price discovery through a multiple round auction format is particularly important in this auction, and whether such benefits would warrant the additional time required to conduct an SMR auction relative to a single-round. Would such benefits outweigh the potential advantages of a single-round format to smaller entities discussed above?

1. Bidding Rounds

66. Under the SMR format, Auction 108 would consist of sequential bidding rounds, each of which would be followed by the release of round results. The initial bidding schedule would be announced in a public notice to be released at least one week before the start of bidding. Details on viewing round results, including the location and format of downloadable results files for each round would be included in the same public notice.

67. Under this auction format, the Commission would conduct Auction 108 over the internet using the FCC auction bidding system. Bidders would have the option of placing bids online or by telephone through a dedicated auction bidder line.

68. OEA would retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. This would allow

OEA to change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The large number of licenses available in the 2.5 GHz band implies that the SMR format could involve a large number of bidding rounds, potentially lasting several months. The Commission seeks comment on this approach. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

2. Stopping Rule

69. The Commission has discretion to establish stopping rules before or during multiple-round auctions in order to complete the auction within a reasonable time. Under this SMR auction format, the Commission would employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. Specifically, bidding would close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if bid withdrawals are permitted). Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. Under this simultaneous stopping rule, bidding would remain open on all licenses until bidding stops on every license. Consequently, under this approach, it is not possible to determine in advance precisely how long the bidding in Auction 108 would last.

70. Further, OEA would retain the discretion to exercise any of the following stopping options during Auction 108:

Option 1. The auction would close for all licenses after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in Auction 108), or no bidder places any new bid on a license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would close for all licenses after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in Auction 108), or no bidder places any new bid on a license that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held license (a license that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2 above.

Option 4. The auction would close after a specified number of additional rounds (special stopping rule) to be announced by OEA. If OEA invokes this special stopping rule, it would accept bids in the specified final round(s), after which the auction would close.

Option 5. The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bids (if withdrawals are permitted in Auction 108). In this event, the effect would be the same as if a bidder had applied a waiver. The activity rule would apply as usual, and a bidder with insufficient activity would lose bidding eligibility or use a waiver.

71. Under the SMR format, OEA would exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, OEA would likely attempt to change the pace of Auction 108. For example, OEA could adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. Under this approach, OEA would retain continuing discretion to exercise any of these options with or without prior announcement by OEA during the auction. The Commission seeks comment on these procedures.

3. Activity Rule

72. In order to avoid unduly prolonging the length of the auction, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. The bidding system calculates a bidder's activity in a round as the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

73. Under an SMR auction format, the Commission would consider dividing the auction into at least two stages, each characterized by a different activity requirement. For example, in a first stage, bidders could be required to be active on 80% of their bidding units, while in a later stage, they could be required to be active on 95% of their bidding units. The Commission would also consider conducting the auction in a single stage, potentially with a 100% activity requirement. If the Commission does not conduct a single stage, the auction would start in Stage One. OEA would then have the discretion to advance the auction to another stage by announcement during the auction. In exercising this discretion, the Commission anticipates that OEA would consider a variety of measures of auction activity, including but not limited to, the length of the auction, the percentage of bidding units associated with licenses on which there are new bids, the number of new bids, and the increase in revenue. For example, when monitoring activity for determining when to change stages, OEA could consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, OEA has generally—but not always—changed stages when this measure was approximately 20% or below for three consecutive rounds of bidding. The Commission seeks comment on these procedures for activity requirements.

4. Activity Rule Waivers and Reducing Eligibility

74. For the SMR auction format, when a bidder's activity in the current round is below the required minimum level, it could preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular license. Activity rule waivers can be either proactive or automatic. Activity rule waivers are primarily a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

75. Under an SMR auction format, each bidder in Auction 108 would be

provided with three activity rule waivers that could be used as set forth at the bidder's discretion during the course of the auction. The FCC auction bidding system would assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system would automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility would be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

76. A bidder with insufficient activity might wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, then the bidder affirmatively would have to override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder could not regain its lost bidding eligibility.

77. Under the simultaneous stopping rule for this auction format, a bidder would be permitted to apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in Auction 108), the auction would remain open and the bidder's eligibility would be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid, no bid withdrawal (if bid withdrawals are permitted in Auction 108), or no proactive waiver would not keep the auction open. The Commission seeks comment on this approach.

5. Reserve Price or Minimum Opening Bids

78. If the Commission adopts an SMR auction format, then it would also establish minimum opening bid amounts. The bidding system would not accept bids lower than these amounts.

79. The Commission would calculate minimum opening bid amounts on a license-by-license basis using the same calculations outlined for the single bidding round auction design based on $0.006 per MHz-pop. The Commission seeks comment on these minimum opening bid amounts, which are specified in Attachment A to the *Auction 108 Comment Public Notice.* If commenters believe that these minimum opening bid amounts would result in unsold licenses or are not reasonable amounts under an SMR format, they should explain why this is so. Commenters should support their claims with valuation analyses and suggested amounts or formulas for minimum opening bids for this auction design.

80. In establishing minimum opening bid amounts under the SMR format, the Commission particularly seeks comment on factors that reasonably could have an impact on bidders' valuation of the spectrum, including the type of service offered, market size, population covered by the proposed facility, and any other relevant factors.

81. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—*e.g.,* by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules or activity requirements.

82. The Commission would not establish any aggregate reserve price for licenses offered through an SMR auction format. The Commission is not aware at this time of circumstances that require establishment of an aggregate reserve price in the public interest for this auction of overlay licenses in the 2.5 GHz band and seek comment only on the per license minimum opening bids that it discusses here. The Commission seeks comment on this issue. If commenters believe the Commission should establish an aggregate reserve price, they should explain why and support their claims with valuation analyses and suggested amounts or formulas for reserve prices.

6. Bid Amounts

83. Under an SMR auction format, an eligible bidder with sufficient eligibility, in each round, would be able to place a bid on a given license in any of up to nine different amounts—the minimum acceptable bid amounts and additional bid amounts discussed below. Under this approach, the FCC auction bidding system would list the acceptable bid amounts for each license.

84. *Minimum Acceptable Bid Amounts.* The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license would be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. Once there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license would be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the activity-based formula described below. In general, the percentage would be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn (if withdrawals are allowed in Auction 108), the minimum acceptable bid amount would equal the second highest bid received for the license.

85. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) would be calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. For Round 1 calculations, because there is no prior round (*i.e.,* no round 0), the activity index from the prior round would be set at 0. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The result will be rounded using the Commission's standard rounding procedures for auctions: Results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10. Under the SMR auction format, the weighting factor would be set initially at 0.5, the minimum percentage at 0.1 (10%), and the

maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license would be between 10% and 20% higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment B to the *Auction 108 Comment Public Notice.* The Commission seeks comment on whether to use this activity-based formula or a different approach for the SMR auction format. In particular, the Commission asks whether it should set the maximum percentage at a higher amount, for example 30% or more, in light of concerns over the large number of rounds that may be required for this auction.

86. *Additional Bid Amounts.* The FCC auction bidding system would calculate any additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount would be multiplied by the additional bid increment percentage, and that result (rounded) would be the additional increment amount. The first additional acceptable bid amount would equal the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount would equal the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount would be the minimum acceptable bid amount plus three times the additional increment amount; etc. The Commission would set the additional bid increment percentage at 5% initially. Hence, the calculation of the additional increment amount would be (minimum acceptable bid amount) * (0.05), rounded. The Commission seeks comment on this approach.

87. *Bid Amount Changes.* Under this auction format, OEA would retain the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if OEA determines that circumstances so dictate. Further, OEA would retain the discretion to do so on a license-by-license basis. Commenters should address the size of changes in the bid amounts, in particular, the additional percentage. Should the Commission increase the size of the minimum acceptable bid amounts in order to manage expeditiously the pace of an SMR auction with approximately 8,300 licenses? At what size do changes in bid amounts make it too difficult for bidders to align their bid amounts with their budgets and willingness to pay? OEA would also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, OEA could set a limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the activity-based formula results in a minimum acceptable bid amount that exceeds the provisionally winning bid on a license by more than the limit, the minimum acceptable bid amount would instead be capped at the provisionally winning bid plus the amount of the limit. The Commission seeks comment on the circumstances under which OEA should employ such a limit, factors OEA should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as the minimum and maximum percentages of the activity-based formula. If OEA were to exercise this discretion, it would alert bidders by announcement in the FCC auction bidding system. The Commission seeks comment on these procedures.

88. The Commission seeks comment on the above procedures for the SMR auction format, including whether to use the activity-based formula to establish the additional percentage or a different approach. If commenters disagree with beginning the auction with nine acceptable bid amounts per license as described above, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction and an alternative number to use later in the auction. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

7. Provisionally Winning Bids

89. Under an SMR auction format, the FCC auction bidding system would determine provisionally winning bids consistent with practices in past auctions. At the end of each bidding round, the bidding system would determine a provisionally winning bid for each license based on the highest bid amount received for the license. A provisionally winning bid would remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction would become the winning bids.

90. If identical high bid amounts were submitted on a license in any given round (*i.e.,* tied bids), the FCC auction bidding system would use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The auction bidding system would assign a pseudo-random number to each bid when the bid is entered. The tied bid with the highest pseudo-random number would become the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, would be permitted to submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the license received any bids in a subsequent round, the provisionally winning bid again would be determined by the highest bid amount received for the license

91. A provisionally winning bid would be retained until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in Auction 108). Under the SMR auction design, provisionally winning bids would count toward activity for purposes of the activity rule.

8. Bid Removal and Bid Withdrawal

92. The FCC auction bidding system would allow each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder would effectively ''unsubmit'' the bid. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round would not be subject to a withdrawal payment. Once a round closes, a bidder would no longer be permitted to remove a bid.

93. The Commission seeks comment on whether bid withdrawals should be permitted should it adopt an SMR auction format for Auction 108. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the withdraw function in the FCC auction bidding system.

94. The Commission has recognized that bid withdrawals may be a helpful tool for bidders seeking to efficiently aggregate licenses or implement backup strategies in certain auctions. The Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increase opportunities for undesirable strategic bidding in certain circumstances.

95. Applying this reasoning to Auction 108, each bidder would be allowed to withdraw provisionally winning bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds may encourage insincere bidding or the use of withdrawals for undesirable strategic bidding purposes. The two rounds in which a bidder may withdraw provisionally winning bids would be at the bidder's discretion, and there would be no limit on the number of provisionally winning bids that a bidder may withdraw in either of the rounds in which it withdraws bids. Withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in 47 CFR 1.2104(g).

96. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission's rules. The Commission proposes the interim bid withdrawal payment be set at 15% of the withdrawn bid for the purposes of an SMR auction. A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. No withdrawal payment is assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. However, if a license for which a bid had been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that license receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

97. The amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from 3% to 20% of the withdrawn bid amount. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses. With respect to the flexible-use 2.5 GHz band licenses being offered in Auction 108, the service rules permit a variety of advanced spectrum-based services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Commission's interest in deterring undesirable strategic use of withdrawals, the Commission proposes to establish an interim bid withdrawal payment of 15% of the withdrawn bid for Auction 108, should it adopt an SMR auction format.

98. The Commission seeks comment on allowing bid withdrawals and an interim bid withdrawal payment of 15% of the withdrawn bid under a potential SMR auction design. If commenters disagree, then the Commission asks them to support their arguments by taking into account the licenses available, the impact on auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

V. Tutorials and Additional Information for Applicants

99. The Commission intends to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 108 to familiarize themselves with the FCC auction application system and the auction bidding system.

100. In addition, OEA and WTB will make available an interactive mapping tool to identify and assess potential encumbrances in the band, including as a result of pending Rural Tribal Priority Window applications. Potential applicants are again reminded, however, that this tool will not represent complete licensing information; all information should be confirmed in ULS for any specific license or area.

VI. Procedural Matters

A. Supplemental Initial Regulatory Flexibility Analysis

101. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *Auction 108 Comment Public Notice* to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *2.5 GHz Notice of Proposed Rulemaking (NPRM),* 83 FR 26396, June 7, 2018, and *2.5 GHz Report and Order,* and other Commission orders pursuant to which Auction 108 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified on the first page of the *Auction 108 Comment Public Notice.* The Commission will send a copy of the *Auction 108 Comment Public Notice,* including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Auction 108 Comment Public Notice* and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

102. *Need for, and Objectives of, the Proposed Rules.* The *Auction 108 Comment Public Notice* sets forth the proposed auction procedures for those entities that seek to bid to acquire licenses in Auction 108. The *Auction 108 Comment Public Notice* seeks comment on proposed procedural rules to govern Auction 108, which will auction geographic overlay licenses of unlicensed spectrum in the 2.5 GHz band (2496–2690 MHz). The specific overlay licenses available in Auction 108 will be determined by the results of the Rural Tribal Priority Window, which gave federally recognized Tribes the opportunity to submit applications to acquire new 2.5 GHz band overlay licenses to provide broadband service on rural Tribal lands before the remaining unassigned spectrum is made generally available to all entities through competitive bidding. The Rural Tribal Priority Window closed on September 2, 2020. Based on review of applications received in the Rural Tribal Priority Window, OEA, in conjunction with WTB, will release a public notice announcing the final inventory of 2.5 GHz band overlay licenses to be offered in Auction 108. This public notice will be released in advance of the deadline

for the submission of short-form applications to bid in Auction 108 so that potential applicants can make informed decisions about whether to apply. OEA and WTB will also make *available resources to assist applicants* in conducting due diligence research regarding potential encumbrances in the band prior to the release of the public notice announcing the final auction inventory.

103. The *Auction 108 Comment Public Notice* and process is intended to provide notice of and adequate time for potential applicants to comment on proposed auction procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 108 participants, the Commission seeks comment on the following procedures that would apply to Auction 108 under either the single-round auction format or the SMR auction format:

- Requirement of an additional certification by each applicant in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 108 and that it has familiarized itself with those procedures and the requirements for obtaining a license and operating facilities in the 2.5 GHz band;
- use of limited information procedures under which the Commission will not make public until after the bidding has closed: (1) The licenses that an applicant selects for bidding in its auction application (FCC Form 175); (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108; (3) an applicant's bidding eligibility; and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;
- establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 108;
- provision of discretionary authority to OEA, in conjunction with WTB, to delay, suspend, or cancel bidding in Auction 108 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- a specific upfront payment amount for each license available in Auction 108;
- establishment of an additional default payment of 15% under § 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

104. The *Auction 108 Comment Public Notice* also seeks comment on the following procedures under the single-round auction format:

- Use of a single-round auction format for Auction 108 with limited package bidding;
- use of a pay-as-bid pricing rule whereby each winning bidder will pay the sum of its winning bid amounts for the licenses it is awarded, less any applicable bidding credit discount;
- establishment of a bidder's bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each license;
- establishment of a minimum bid amount for each license available in Auction 108 based on each license's potential MHz-pops;
- use of an either/or indicator to allow a bidder to indicate that two or more of its bids are to be treated as mutually exclusive by the bidding system when assigning winning bids; and
- a methodology for processing bids.

105. In addition, the *Auction 108 Comment Public Notice* seeks comment on the following procedures under the SMR auction format:

- Use of a simultaneous multiple-round auction format for Auction 108, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion by OEA to exercise alternative stopping rules under certain circumstances);
- use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating;
- an auction with one or more stages, in which, for example, a bidder is required to be active on 80% of its bidding eligibility in each round of the first stage, and on 95% of its bidding eligibility in each round of the second stage;
- provision of three activity rule waivers for each bidder to allow it to preserve eligibility during the course of the auction;
- use of minimum acceptable bid amounts and additional bid increments, along with a methodology for calculating such amounts, with OEA retaining discretion to change its methodology if circumstances dictate;
- a procedure for breaking ties if identical high bid amounts are submitted on a license in a given round;
- bid removal procedures;
- whether to permit bid withdrawals; and
- establishment of an interim bid withdrawal percentage of 15% of the withdrawn bid if the Commission were to allow bid withdrawals in Auction 108.

106. The proposed procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules, the *2.5 GHz Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

107. *Legal Basis.* The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in 47 U.S.C. 309(j)(3)(B) and 47 U.S.C. 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules, updated most recently in 2015, pursuant to which it has conducted auctions since the inception of the auctions program in 1994 and would conduct Auction 108. In promulgating those rules, the Commission conducted numerous RFA analyses to consider the possible impact of those rules on small businesses that might seek to participate in Commission auctions. In addition, a Final Regulatory Flexibility Analysis (FRFA) was included in the *2.5 GHz Report and Order* that adopted rule provisions relevant to this notification.

108. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

109. As noted above, Regulatory Flexibility Analyses were incorporated into the *2.5 GHz NPRM* and the *2.5 GHz Report and Order.* In those analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auction 108 Comment Public Notice,* the Commission adopts by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *2.5 GHz NPRM* and the *2.5 GHz Report and Order.*

110. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small entity applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant which fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

111. The Commission does not expect the processes and procedures proposed in the *Auction 108 Comment Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 108 and comply with the procedures it ultimately adopts because of the information, resources, and guidance the Commission makes available to potential and actual participants. For example, the Commission intends to release an online tutorial that will help applicants understand the procedures for filing of the auction short-form application (FCC Form 175). The Commission also intends to make information on the bidding system available and offer demonstrations and other educational opportunities for applicants in Auction 108 to familiarize themselves with the FCC auction application system and the auction bidding system. By providing these resources as well as the resources discussed below, the Commission expects small entities that use the available resources to experience lower participation and compliance costs. Nevertheless, while the Commission cannot quantify the cost of compliance with the proposed procedures, it does not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the proposals for Auction 108 are similar in many respects to the procedures in recent auctions conducted by the Commission.

112. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

113. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the Commission's potential use of a single bidding round and a pay-as-bid pricing rule. The Commission expects that many small entities will bid in Auction 108 and the use of a single-round auction would significantly reduce the time and resource commitment required for participation, if adopted. Due to the large inventory of licenses that will be available in Auction 108, the multiple-round auction format that the Commission has typically used in auctioning spectrum licenses could require several months to complete and require participating bidders to expend resources to consistently monitor the auction during that time. In contrast, the Commission anticipates that with a single bidding round, bid processing for Auction 108 could be completed within a week. In addition, the use of a pay-as-bid pricing rule, which requires each winning bidder to pay the sum of its winning bid amounts for the licenses it is awarded, less any applicable bidding credit discount, should also benefit small entities by giving them more certainty about the costs of their winning bids.

114. In the event the Commission adopts the SMR auction format, it has also taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the many resources the Commission provides potential auction participants. OEA and WTB propose to make resources available to assist applicants in conducting due diligence research regarding potential encumbrances in the band prior to the release of the public notice announcing the final auction inventory. Small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and the FCC's auction bidding system. An FCC Auctions Hotline provides access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource which provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. Small entities may also use the web-based, interactive online tutorial produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

115. The Commission also makes various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to and at the close of Auction 108, the Commission will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. The Commission makes this information easily accessible and without charge to benefit all Auction 108 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

116. Prior to the start of bidding, the Commission also proposes to make available to bidders various educational materials. Eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, the Commission intends to conduct Auction 108 electronically over the internet using a web-based auction system that eliminates the need for bidders to be physically present in a specific location. Qualified bidders also have the option to place bids by telephone. These mechanisms are made available to facilitate participation in Auction 108 by all eligible bidders and may result in significant cost savings for small entities that use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small entities.

117. For Auction 108, the Commission proposes a $25 million cap on the total bidding credit amount that may be awarded to an eligible small business and a $10 million cap on the total bidding credit amount that may be

awarded to a rural service provider. In addition, the Commission proposes a $10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to licenses won in counties located within any PEA with a population of 500,000 or less. Based on the technical characteristics of the 2.5 GHz band and its analysis of past auction data, the Commission anticipates that its proposed caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses.

118. These proposed procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 30 of the Commission's rules, 47 CFR parts 1 and 30, the *2.5 GHz Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

119. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

B. Paperwork Reduction Act Analysis

120. The *Auction 108 Comment Public Notice* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Deadlines and Filing Procedures

121. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments or reply comments on or before the dates indicated on the first page of the *Auction 108 Comment Public Notice* in AU Docket No. 20–429. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

122. *Ex Parte Requirements.* This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations must file a copy of any written presentations or memoranda summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–03442 Filed 3–1–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–55; RM–11880; DA 21–164; FR ID 17509]

Television Broadcasting Services Kearney, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking (Petition) filed by KHGI Licensee, LLC, (Licensee), licensee of KHGI–TV, channel 13, Kearney, Nebraska (KHGI or Station), requesting the substitution of channel 18 for channel 13 at Kearney in the DTV Table of Allotments. Licensee states that the proposed channel substitution for KHGI from VHF channel 13 to UHF channel 18 would allow KHGI to significantly improve its over-the-air service to the Station's viewers in the Kearney, Nebraska, area. Licensee states that the proposed channel change from channel 13 to channel 18 would result a substantial increase in signal receivability for KHGI's core viewers and enable viewers to receive the Station's signal with a significantly smaller antenna. Licensee maintains that KHGI, as a VHF channel station, has had a long history of dealing with severe reception problems exacerbated by the analog to digital conversion. The proposed migration of KHGI from channel 13 to channel 18, Licensee contends, will be a favorable arrangement of allotments based on the enhanced signal levels that will be delivered to a large percentage of the Station's population without any predicted loss of coverage. Further, Licensee maintains that the change will result in an predicted increase of more than 37,000 persons in the Station's overall population and the staff has determined there is no loss of service. Licensee concludes by saying that the public interest would be best served by promptly granting its Petition with the specifications set forth therein so that Kearney-area viewers may benefit from substantially improved over-the-air broadcast television service as soon as possible.

DATES: Comments must be filed on or before April 1, 2021 and reply comments on or before April 16, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, at (202) 418–2324; or *Shaun.Maher@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–55; RM–11880; DA 21–164, adopted February 12, 2021, and released February 12, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to

FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

■ 2. In § 73.622 in paragraph (i) amend the Post-Transition Table of DTV Allotments under Nebraska by revising the entry for Kearney to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
NEBRASKA	
* * * * *	
Kearney	18
* * * * *	

[FR Doc. 2021–04290 Filed 3–1–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–59; RM–11883; DA 21–202; FR ID 17517]

Television Broadcasting Services Corpus Christi, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking (Petition) filed by Scripps Broadcasting Holdings, LLC (Scripps or the Petitioner), licensee of KRIS–TV, channel 13, Corpus Christi, Texas, requesting the substitution of channel 26 for channel 13 at Corpus Christi in the DTV Table of Allotments. Scripps states that it has received numerous complaints from viewers saying that they are unable to receive the station on channel 13, and that it is apparent that the KRIS–TV VHF signal is not providing viewers with the quality of service provided by UHF stations in the market. Scripps further states that the station is now silent, after a wind storm in April 2020 caused the tower to collapse, and Scripps would prefer to construct a new UHF facility on channel 26 in order to significantly improve off-air service, rather than replace the VHF channel 13 facility.

DATES: Comments must be filed on or before March 17, 2021 and reply comments on or before March 29, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Christina H. Burrow, Esq., Cooley, LLP, 1229 Pennsylvania Avenue NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–59; RM–11883; DA 21–202, adopted February 22, 2021, and released February 22, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622 in paragraph (i) amend the Post-Transition Table of DTV

Allotments under Texas by revising the entry for Corpus Christi to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
TEXAS	
* * * * *	
Corpus Christi	8, 10, *23, 26, 27, 38
* * * * *	

[FR Doc. 2021–04289 Filed 3–1–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–61; RM–11885; DA 21–204; FR ID 17519]

Television Broadcasting Services Lubbock, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking (Petition) filed by Gray Television Licensee, LLC (Gray or the Petitioner), licensee of KCBD, channel 11, Lubbock, Texas, requesting the substitution of UHF channel 36 for VHF channel 11 at Lubbock in the DTV Table of Allotments. Gray states that many of its viewers experience significant difficulty receiving the station's VHF signal and that all but 350 of the 414,091 persons currently served by KCBD will continue to be well served by at least five other stations, a number which the Commission has recognized as *de minimus.*

DATES: Comments must be filed on or before April 1, 2021 and reply comments on or before April 16, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joan Stewart, Esq., Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–61; RM–11885; DA 21–204, adopted February 22, 2021, and released February 22, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—Radio Broadcast Service

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

■ 2. In § 73.622 in paragraph (i) amend the Post-Transition Table of DTV Allotments under Texas by revising the entry for Lubbock to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
TEXAS	
* * * * *	
Lubbock	16, 27, 35, 36, *39, 40
* * * * *	

[FR Doc. 2021–04293 Filed 3–1–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210219–0026]

RIN 0648–BK01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Framework Action

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 a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would prohibit certain fishing activities and, with one exception, the possession of Gulf of Mexico (Gulf) reef fish within the Madison-Swanson and Steamboat Lumps Marine Protected Areas (MPAs). The purpose of this proposed rule and the framework action is to protect spawning aggregations of mature reef fish species by reducing the potential for illegal fishing activities within these MPAs.

DATES: Written comments on the proposed rule must be received by April 1, 2021.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2020–0142,'' by either of the following methods:

• *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/docket/NOAA-NMFS-2020-0142, click the* ''*Comment Now!*'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Rich Malinowski, 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 required fields if you wish to remain anonymous).

Electronic copies of the framework action may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/modification-fishing-access-eastern-gulf-mexico-marine-protected-areas.* The framework action includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the reef fish fishery under the Reef Fish FMP. The Reef Fish FMP was prepared by the 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 Madison-Swanson and Steamboat Lumps MPAs were established on June 19, 2000 (65 FR 31827, May 19, 2000). The two MPAs combined cover 219 square nautical miles (nmi^2) (751 square kilometers (km^2)) near the 240-foot (73-meter) contour, also known as the 40-fathom contour, off northwest and west Florida. The area of Madison-Swanson is 115 nmi^2 (394 km^2) and the area of Steamboat Lumps is 104 nmi^2 (357 km^2). The distance between these MPAs is approximately 69 nmi (127 km). The Council and NMFS created the MPAs to provide protection to spawning aggregations of gag, which is a species of grouper, and other reef fish. When the MPAs were implemented, all fishing inside the MPAs was prohibited, except for Atlantic highly migratory species (HMS) such as tunas, billfishes, and oceanic sharks, which are managed separately by NMFS' Atlantic HMS Management Division. Since 2004, surface trolling has been allowed for non-reef fish species in the MPAs from May 1 through October 31 annually (69 FR 24532, May 4, 2004). In 2006, NMFS implemented complementary management measures to prohibit fishing for Atlantic HMS except by surface trolling from May 1 through October 31 annually (71 FR 58058, October 2, 2006). In addition, the possession of Gulf reef fish while inside the MPAs is prohibited, except on a vessel in transit with fishing gear stowed as specified in § 622.34(a)(4).

At its October 2019 meeting, the Council's Reef Fish Advisory Panel (AP) discussed observations of illegal harvest of reef fish species under the appearance of trolling within the boundaries of the MPAs. Reef Fish AP members believed that the MPAs are not a legitimate trolling destination for non-reef fish species and that the illegal harvest of reef fish is occurring in these areas. Reef Fish AP members also acknowledged that it was possible to drift through the MPAs with fishing tackle weighted deep below the vessel to increase the probability of hooking a reef fish. At this meeting, an enforcement officer from the Florida Fish and Wildlife Conservation Commission noted that enforcement of the MPAs is challenging due to the remote locations.

At its January 2020 meeting, the Council discussed the Reef Fish AP's recommendation to prohibit all fishing (other than for Atlantic HMS) in the MPAs year-round to reduce the potential for targeting reef fish while bottom fishing under the guise of trolling within the MPAs. The U.S. Coast Guard representative on the Council agreed that enforcement in the MPAs can be difficult due to the distance from port.

In response to these concerns, the Council developed a framework action that would modify the restrictions on fishing in, and transiting through, the Madison-Swanson and Steamboat Lumps MPAs in the eastern Gulf. The framework action would prohibit all fishing, except for HMS, year-round in the Madison-Swanson and Steamboat Lumps MPAs, and prohibit the possession of Gulf reef fish year-round in these areas unless a vessel has a valid Federal commercial permit for Gulf reef fish, an operating satellite-based VMS, and is in transit with fishing gear appropriately stowed. The Council determined that eliminating surface trolling from May 1 through October 31, which would effectively close the MPAs to fishing year-round, would make it easier for law enforcement to detect whether a vessel was fishing within the MPAs and result in direct positive effects for mature spawning gag that are known to inhabit the MPAs, as well as other resident federally managed reef fish. The Council also determined that a prohibition on possession Gulf reef fish would aid law enforcement. However, in response to concerns raised by fishermen who hold Federal commercial reef fish permits, the Council made an exception to this prohibition for vessels issued these permits because those vessels are easily tracked through the required VMS.

These prohibitions would not apply to Atlantic HMS. However, on July 20, 2020, the Council sent a letter that requested the NMFS Atlantic HMS Management Division consider developing compatible regulations for HMS to the proposed management measures in the framework action. Federal regulations currently applicable to Atlantic HMS in the MPAs are located at 50 CFR 635.

Management Measures Contained in This Proposed Rule

This proposed rule would prohibit fishing year-round in the Madison-Swanson and Steamboat Lumps MPAs. Additionally, the possession of any Gulf reef fish would be prohibited year-round in the MPAs, with a limited exception.

This proposed rule would revise current fishing restrictions in the MPAs. Currently, surface trolling is the only allowable fishing activity and is only permitted from May through October each year. Surface trolling is defined in § 622.34(a)(5) as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots (4.6 mph) with a visible wake, and the use of downriggers, wire lines, planers, or similar devices is not allowed. Federally managed species that may be targeted by surface trolling in the MPAs include the Gulf CMP species

king mackerel and Spanish mackerel, and HMS.

This proposed rule would prohibit fishing year-round for all species except HMS. However, as stated earlier, NMFS may implement compatible regulations for HMS later, as requested by the Council.

Currently, fishing vessels with Gulf reef fish on board may transit through the MPAs as long as all fishing gear is appropriately stowed. This provision allows transiting fishing vessels to proceed between destinations, without the need to reroute to avoid a specific area even if they are in possession of reef fish. For these MPAs, transit means non-stop progression through the area and fishing gear appropriately stowed is defined in 50 CFR 622.34(a)(4)(i) through (iv). This proposed rule would prohibit the possession of Gulf reef fish in the MPAs even when transiting unless the vessel was issued a valid Federal commercial permit for Gulf reef fish, which requires an operating satellite-based VMS. As with the current regulation, all fishing gear would need to be appropriately stowed.

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 the framework amendment, the FMP, 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained at the beginning of this **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY** section of the preamble.

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 or recordkeeping compliance requirements are introduced in this proposed rule.

The proposed rule concerns recreational and commercial fishing within the Madison-Swanson and Steamboat Lumps MPAs within the Gulf exclusive economic zone (EEZ). Currently, the possession of Gulf reef fish in these MPAs is generally prohibited, and surface trolling is the only allowable fishing activity during May through October. As stated previously, this proposed rule does not affect Atlantic HMS. Therefore, the proposed rule directly affects both anglers (recreational fishers) and commercial fishing businesses that harvest non-reef fish species, such as king mackerel, Spanish mackerel, or cobia within the MPAs by surface trolling and both anglers, and charter vessels and headboats (for-hire) fishing businesses that operate vessels that transit through the MPAs with reef fish onboard. Because of the proximity of the MPAs to the west coast of Florida, NMFS expects that any entity that may surface troll for CMP species within the MPAs or operate a vessel that transits through the MPAs with reef fish onboard lands its catch in Florida.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private, or leased vessels. Therefore, neither estimates of the number of anglers, nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that harvests either king mackerel or Spanish mackerel in the Gulf EEZ must have a valid Federal permit for these Gulf CMP species issued to that vessel. From 2014 through 2018, an annual average of 2,081 vessels had Federal commercial permits for one or both of those CMP species, and 77 (3.7 percent) of those permitted vessels used surface trolling to harvest the CMP species and land their catch in Florida. An estimated 74 businesses operate the 77 vessels, and all of these businesses are expected to operate primarily in the commercial fishing industry (NAICS code 11411).

No Federal permit is required for the commercial harvest and sale of Gulf cobia. However, from 2014 through 2018, an annual average of 5 of the above 77 commercial fishing vessels reported harvesting Gulf cobia by surface trolling.

For Regulatory Flexibility Act purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) 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 its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide. The average annual revenue per vessel for the 77 vessels that harvest CMP species by surface trolling and land those fish in Florida is $14,707 (2018 dollars). Therefore, the 74 commercial fishing businesses that operate the 77 vessels are classified as small.

Any business that operates a for-hire fishing vessel that has reef fish onboard in the Gulf EEZ must have a valid Federal charter vessel/headboat permit for Gulf reef fish. As of June 23, 2020, there were 770 such permits held by entities residing in Florida. That figure is also consistent with the average annual number of Federal charter vessel/headboat permits for Gulf reef fish held by entities residing in Florida from 2014 through 2018. The proposed rule would not directly affect for-hire vessels with both valid Federal charter vessel/headboat permits and commercial permits for Gulf reef fish, and approximately 24 percent (183) of the for-hire vessels have both permits. Therefore, 587 vessels with a Federal charter vessel/headboat permit for Gulf reef fish could be directly affected by the proposed rule. An estimated 411 businesses operate these 587 vessels.

A business in the for-hire fishing industry (NAICS code 487210) is a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and its combined annual receipts that are no more than $8.0 million for all of its affiliated operations worldwide. The average charter vessel operating in the Gulf with a Federal reef fish permit is estimated to receive approximately $88,095 (2018 dollars) in gross revenue annually. The average headboat operating in the Gulf with a Federal reef fish permit is estimated to receive approximately $267,358 (2018 dollars) in gross revenue annually. From that, NMFS concludes that the above 411 for-hire fishing businesses are classified as small.

Currently, from May through October, surface trolling is allowed within the MPAs. The proposed rule would prohibit surface trolling within the MPAs year-round.

Average annual dockside revenue from CMP species landed by federally permitted commercial vessels from May through October of 2014 through 2018 accounted for 20 percent ($2,948 in 2018 dollars) of the annual dockside revenue from all landings by the average federally permitted vessel that used surface trolling and landed CMP species in Florida. If all May through October

landings of CMP species by these vessels were entirely of CMP species harvested from the MPAs, the average adverse economic impact of the proposed rule would be $2,948 annually per vessel for 77 CMP federally permitted vessels. However, that is highly unlikely. The MPAs are small and represent a relatively small percentage of the Gulf EEZ. Madison-Swanson is 115 nmi^2 (394 km^2) and Steamboat Lumps is 104 nmi^2 (357 km^2). Moreover, the MPAs are considered as relatively poor destinations for successful surface trolling. Therefore, NMFS expects any adverse economic impact of a year-round surface trolling prohibition on the 74 small commercial fishing businesses to be minimal.

Currently, possession of Gulf reef fish year-round or any other species of fish from November through April, including CMP species, is prohibited in the MPAs, except on a vessel in transit with fishing gear appropriately stowed. Under the proposed rule, the possession of any species of Gulf reef fish would be prohibited year-round in the MPAs, except for a vessel with a valid Federal commercial Gulf reef fish permit, which is required to have an operating satellite-based VMS, that is in transit with fishing gear stowed.

Under the proposed rule, the 411 small businesses that operate the 587 for-hire fishing vessels that have a for-hire reef fish permit, but do not have a Gulf commercial reef fish permit, would no longer be able to transit through the MPAs with reef fish onboard. It is unknown how many, if any, of the 587 for-hire vessels transit through the MPAs with reef fish onboard. However, because of the relatively small size of the MPAs and the distance between them, NMFS expects that any of those vessels could relatively easily avoid transiting through the MPAs if they have reef fish on board and any additional cost to transit around the MPAs would be minimal.

From the above, NMFS expects any impacts from the proposed rule on small businesses in the commercial fishing and for-hire fishing industries to be minimal. Therefore, NMFS concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Marine protected area, Reef fish.

Dated: February 22, 2021.

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. Amend § 622.34 by:

■ a. Revising paragraph (a) introductory text and paragraphs (a)(2) and (3), and

■ b. Removing paragraphs (a)(5) and (6).

The revisions read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

(a) *Closure provisions applicable to the Madison and Swanson sites, Steamboat Lumps, and the Edges.* For the purpose of this paragraph (a), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. The provisions of this paragraph (a) do not apply to Atlantic highly migratory species, such as tunas, billfishes, and oceanic sharks. See 50 CFR part 635 for any provisions applicable to fishing for or possession of Atlantic highly migratory species in these areas.

* * * * *

(2) Within the Madison and Swanson sites and Steamboat Lumps: Fishing is prohibited year-round; possession of Gulf reef fish is prohibited year-round except when such possession is on a vessel that has been issued a valid Federal commercial permit for Gulf reef fish, has an operating satellite-based VMS unit, and is in transit with fishing gear stowed as specified in paragraph (a)(4) of this section; and possession of any non-Gulf reef fish species is prohibited year-round, except for such possession on a vessel in transit with fishing gear stowed as specified in paragraph (a)(4) of this section.

(3) Within the Edges during January through April each year, all fishing is prohibited and the possession of any fish species is prohibited, except for such possession on a vessel in transit with fishing gear appropriately stowed as specified in paragraph (a)(4) of this section.

* * * * *

[FR Doc. 2021–04178 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210224–0029]

RIN 0648–BK22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery off the Atlantic States; Amendment 12

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 12 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin Wahoo FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would add bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP and designate them as ecosystem component (EC) species. The purpose of this proposed rule and Amendment 12 is to acknowledge the ecological role of bullet mackerel and frigate mackerel as forage fish and to achieve the ecosystem management objectives in the Dolphin Wahoo FMP.

DATES: Written comments must be received on or before April 1, 2021.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2020–0146,'' by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''*NOAA–NMFS–2020–0146*'', in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 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), 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 12, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-12-add-bullet-mackerel-and-frigate-mackerel-ecosystem-component-species.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery off the Atlantic states is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Council manages dolphin and wahoo under the Dolphin Wahoo FMP in Federal waters off the Atlantic states from Maine south to the Florida Keys in the Atlantic. In the western North Atlantic, bullet mackerel are found from Cape Cod to the Gulf of Mexico, and frigate mackerel are found mostly from North Carolina to Florida. As described in Amendment 12, both bullet mackerel and frigate mackerel are found in the diets of dolphin and wahoo in the North Atlantic. In particular, wahoo has been demonstrated to have a strong dietary reliance on bullet and frigate mackerel, indicating that these mackerel species are the most dominant forage species observed in the diets of wahoo. Dolphin tend to have more diverse diets than wahoo and have a lower reliance on these mackerel species as prey. Additionally, bullet and frigate mackerel have been identified as important forage species for other offshore pelagic predatory species in the Atlantic such as blue marlin and yellowfin tuna. Bullet mackerel feed on a variety of prey, especially clupeoids (*i.e.,* herrings and sardines), crustaceans, and squids. Frigate mackerel feed on a variety of fish, squid, and small crustaceans. Therefore, given their presence as a common forage fish and prey food source, bullet mackerel and frigate mackerel are an important component of the marine environment in the Atlantic. There is no stock assessment for dolphin, wahoo, bullet mackerel, or frigate mackerel. In Atlantic Federal waters, dolphin and wahoo are targeted both commercially and recreationally. Annual reported commercial and recreational landings of bullet mackerel and frigate mackerel are low along the entire Atlantic coastline.

Regulations implemented under the Magnuson-Stevens Act define EC species as ''stocks that a Council or the Secretary has determined do not require conservation and management, but desire to list in a FMP in order to achieve ecosystem management objectives'' (50 CFR 600.305(d)(13)). National Standards (NS) General guidelines state that a Council should consider a non-exhaustive list of 10 factors when deciding whether additional stocks require Federal conservation and management (50 CFR 600.305(c)(1)). The proposed EC designation for bullet and frigate mackerel was recommended to the Council by the Council's Scientific and Statistical Committee (SSC), their Dolphin Wahoo Advisory Panel (AP), and the Habitat Protection and Ecosystem-Based Management (Habitat) AP, and received extensive positive comments from the public during scoping of Amendment 12. The Dolphin Wahoo AP and Habitat AP members acknowledged that wahoo, in particular, target these mackerel species as prey. The AP members also stated that the Council should consider a conservative approach to ensure there are no major increases in the harvest of bullet mackerel and frigate mackerel in the foreseeable future as a result of any EC designation. This designation would address the Council's growing emphasis on developing ecosystem management approaches to fisheries management and advancing ecosystem management objectives in the Dolphin Wahoo FMP.

The extent to which the low landings of bullet mackerel and frigate mackerel occur within the dolphin and wahoo fishery is unknown; however, it is unlikely that these species are often harvested in conjunction with efforts to target dolphin and wahoo, especially in the commercial sector. Bullet and frigate mackerel have largely been landed commercially in the Mid-Atlantic region using gill net, pound net, float trap, and otter trawl gear, none of which are allowable gear types in the dolphin and wahoo fishery. Recreational landings of bullet and frigate mackerel have largely occurred in the South Atlantic Region, with some limited catches reported from the Mid-Atlantic Region. Furthermore, recreational fishermen have also noted that these species are used as bait for tuna and billfish, such as blue marlin. NMFS and the Council have determined that bullet mackerel and frigate mackerel are currently not in need of conservation and management, making them eligible for consideration as EC species. This preliminary eligibility determination was done after consideration of the provisions within the NS Guidelines and requirements of the Magnuson-Stevens Act. Furthermore, adding bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP as EC species meets the FMP's ecosystem management objectives (50 CFR 600.305(c)(5) and 600.310(d)(1)).

Management Measures Contained in This Proposed Rule

This proposed rule would add bullet mackerel and frigate mackerel to the Dolphin Wahoo FMP and designate them as EC species. This proposed rule would add no additional management measures to the Dolphin Wahoo FMP as a result of this EC species designation, either for bullet and frigate mackerel, or for dolphin and wahoo.

The proposed rule could be expected to result in potential indirect benefits such as increased awareness among the fishermen, fishing communities, data collecting agencies, and regulatory entities managing dolphin, wahoo, bullet mackerel, and frigate mackerel. If landings for these two mackerel species were to greatly increase in the future to unsustainable levels, fisheries managers could be made aware of the changing stock status before the stocks are depleted, which may have subsequent beneficial effects on populations of several economically important predatory fish species, including dolphin, wahoo, blue marlin, and yellowfin tuna.

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 12, the Dolphin and Wahoo FMP, 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 Magnuson-Stevens Act provides the legal 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 this proposed rule. The objective of this proposed rule is to acknowledge the ecological role of bullet mackerel and frigate mackerel as forage fish in general and specifically as prey for wahoo.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows.

This proposed rule, if implemented, would add bullet mackerel and frigate mackerel to the Dolphin and Wahoo FMP as EC species. Even though this proposed rule would alter the existing regulations to indicate that bullet mackerel and frigate mackerel are EC species in the Dolphin and Wahoo FMP, it would not implement any new management measures, and, therefore, is administrative in nature. As such, this proposed rule would not directly regulate any small entities.

Because this proposed rule, if implemented, is not expected to directly regulate any small entities, it is not expected to affect a substantial number of small entities. Further, because no entities are expected to be affected by this proposed rule, the profits of small entities are also not expected to change, and thus no economic impacts on small entities are expected.

Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Dolphin, Ecosystem species, Fisheries, Fishing, Wahoo.

Dated: February 24, 2021.

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. Add Table 6 to Appendix A to part 622 to read as follows:

* * * * *

Appendix A to Part 622—Species Tables

* * * * *

Table 6 of Appendix A to Part 622—Atlantic Dolphin and Wahoo

Dolphin, *Coryphaena equiselis or Coryphaena hippurus*

Wahoo, *Acanthocybium solandri*

The following species are designated as ecosystem component species:

Bullet mackerel, *Auxis rochei*

Frigate mackerel, *Auxis thazard*

[FR Doc. 2021–04265 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 39
Tuesday, March 2, 2021

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; Comments Requested; Correction

February 25, 2021.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: 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 these information collections are best assured of having their full effect if received by April 1, 2021. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

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.

Agricultural Marketing Service

Title: Regulations and Related Reporting and Recording Requirements—FTPP, Packers and Stockyards Division

Action: Notice: Correction

OMB Control Number: 0580–0015

Summary of Collection: The Agricultural Marketing Service published a document in the **Federal Register** on February 24, 2021, Volume 86, Number 35, Page 11217, concerning a request for comments on the information collection '' Regulations and Related Reporting and Recording Requirements—FTPP, Packers and Stockyards Division'', OMB Control Number 0580–0015. The OMB control number 0580–0015 is incorrect. The correct OMB control number should be 0581–0308. The number of respondents 15,371 and burden hours 26,137 are incorrect. The correct number of respondents is 14,631 and the burden hours 51,526.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–04248 Filed 3–1–21; 8:45 am]

BILLING CODE 3410–02–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Rhode Island State Advisory Committee to the Commission will convene meetings on March 25, 2021 and April 22, 2021 at 3:00 p.m. (ET). The purpose of the meetings is to discuss a potential statement by the Committee on Covid-19 and vaccinations for Black, Indigenous, and People of Color in Rhode Island, along with project planning related to the Committee's project on licensing barriers to employment post-conviction in Rhode Island.

DATES: The meetings will be held on the following dates from 3:00 p.m.–4:00 p.m. ET:

- March 25, 2021 from 3:00–4:00 p.m. ET
- April 22, 2021 from 3:00–4:00 p.m. ET

To join by web conference: *https://civilrights.webex.com/civilrights/j.php?MTID=m3c653c29d4ca0687a9430fcd8b844f27*

- Password if prompted: USCCR
- If you wish to remain anonymous, please enter an alias when joining the meeting so your name does not appear in the Webex participant list

To join by phone only, dial: 1–800–360–9505; Access Code: 199 607 1840

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. Individuals may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request additional accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit

at the above phone number or email address.

Agenda: Thursday, March 25, 2021 and Thursday, April 22, 2021 from 3:00–4:00 p.m. (ET)

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of Minutes from the Last Meeting
IV. Discussions
  a. Statement on Covid-19 and Black, Indigenous, and People of Color
  b. Project Planning for Licensing Report Dissemination
V. Public Comment
VI. Next Steps
VII. Adjournment

Dated: February 25, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–04278 Filed 3–1–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting via the web platform Webex on, March 11, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is for the committee to discuss civil rights topics in the state in a search of a new topic of study.

DATES: The meetings will be held on:

- Thursday, March 11, 2021, at 12:00 p.m. Central Time

https://civilrights.webex.com/civilrights/j.php?MTID=mbfc50dadd21bfd4a04a9f0961cb64a81 or Join by phone: 800–360–9505 USA Toll Free Access code: 1998 186 105

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Chair's Comments
III. Committee Discussion
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: February 25, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–04277 Filed 3–1–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Rhode Island Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Rhode Island Advisory Committee. The meeting scheduled for Wednesday, March 10, 2021 at 12:00 p.m. (ET) is cancelled. The notice is in the **Federal Register** of Thursday, January 21, 2021, in FR Doc. 2021–01151, on pages 6293–6294.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, (202) 921–2212, *ebohor@usccr.gov.*

Dated: February 25, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–04276 Filed 3–1–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Monday, March 15, 2021 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss civil rights concerns in the state.

DATES: The meeting will be held on Monday, March 15, 2021 at 1pm Central time.

Web Access (audio/visual): Register at: *https://bit.ly/3aTBr2h.*

Phone Access (audio only): 800–360–9505, Access Code 199 588 9563.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov*

under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
III. Committee Discussion: Civil Rights and Education in Arkansas
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: February 25, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–04283 Filed 3–1–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–054]

Certain Aluminum Foil From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (China) during the period of review (POR) August 14, 2017, through December 31, 2018.

DATES: Applicable March 2, 2021.

FOR FURTHER INFORMATION CONTACT: John McGowan or Tyler Weinhold, 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) 482–3019 or (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the Preliminary Results of this administrative review in the **Federal Register** on June 29, 2020.[1] We invited interested parties to comment on the Preliminary Results. On August 10, 2020, we received timely filed case briefs from the following interested parties: Jiangsu Zhongji Lamination Materials Co., Ltd. (Zhongji); Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiamen); the Government of China (GOC); and the Aluminum Association Trade Enforcement Working Group (the petitioners).[2] On August 31, 2020, we received a timely filed rebuttal brief from the petitioners. Further, we received letters in lieu of case and rebuttal briefs from ProAmpac[3] on August 10 and 31, 2020, respectively.

On July 21, 2020, Commerce tolled the due date for these final results by 60 days.[4] On December 16, 2020, Commerce extended the period for issuing these final results of review by 60 days, until February 24, 2021.[5]

Scope of the Order

The product covered by the Order is aluminum foil from China.[6] A full description of the scope of the Order is contained in the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties, and to which Commerce responded in the Issues and Decision Memorandum, is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on comments received and record evidence, Commerce made certain changes to the Preliminary Results, correcting certain minor calculation errors with regard to the respondent companies, Zhongji and Xiashun. These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce continues to find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying all of Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to section 776(a) and (b) of the Act, see the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), Commerce calculated a countervailable subsidy rate for mandatory respondents Zhongji and Xiashun. For the non-selected companies subject to this review, Commerce followed its practice, which is to base the subsidy rates on a weighted average of the subsidy rates calculated for those companies selected for individual examination, excluding rates of zero, de minimis, or rates determined entirely based on adverse facts available.[9] To this end, Commerce calculated a rate by weight averaging the calculated subsidy rates of Zhongji and Xiashun using their publicly-available sales data for exports of subject merchandise to the United States during the POR. Commerce finds the

[1] *See Certain Aluminum Foil from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Rescission of Review, in Part; 2017–2018,* 85 FR 38861 (June 29, 2020) (Preliminary Results), and accompanying Preliminary Results Memorandum.

[2] Individual Members of the Aluminum Association Trade Enforcement Working Group include: JW Aluminum Company, Novelis Corporation, and Reynolds consumer Products LLC.

[3] ProAmpac Intermediate, Inc., Ampac Holdings, LLC and Jen-Coat, Inc., DBA Prolamina (collectively, ProAmpac).

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[5] *See* Memorandum, ''Certain Aluminum Foil from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 8/14/2017—12/31/2018,'' dated December 16, 2020.

[6] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 76 FR 17360 (April 19, 2018)

[7] *See* Memorandum, ''Decision Memorandum for the Final Results of the 2017–2018 Countervailing Duty Administrative Review of Certain Aluminum Foil from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See, e.g., Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 18806, 18811 (April 13, 2010), *unchanged in Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386 (June 29, 2010).

countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate-2017 (percent ad valorem)	Subsidy rate-2018 (percent ad valorem)
Jiangsu Zhongji Lamination Materials Co., Ltd.[10]	45.22	48.36
Xiamen Xiashun Aluminum Foil Co., Ltd.	17.05	19.88
Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd.[11]	31.50	41.90
Hunan Suntown Marketing Limited	31.50	41.90
Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd.	31.50	41.90
Shanghai Shenyan Packaging Materials Co., Ltd.	31.50	41.90
SNTO International Trade Limited	31.50	41.90
Suzhou Manakin Aluminum Processing Technology Co., Ltd.[12]	31.50	41.90

Disclosure

Commerce will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[13]

Assessment Rates

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable ad valorem assessment rates listed. Consistent with its recent notice,[14] Commerce intends to issue assessment instructions, including assessment instructions for those companies for which we rescinded the review,[15] to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rates

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–04270 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876, A–489–822]

Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

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

[10] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Jiangsu Zhongji Lamination Materials Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. (Zhongji HK); Jiangsu Huafeng Aluminum Industry Co. Ltd. (Jiangsu Huafeng); Shantou Wanshun Material Stock Co., Ltd. (Shantou Wanshun); and Anhui Maximum Aluminum Industries Company Limited (Anhui Maximum). The subsidy rates apply to all cross-owned companies.

[11] In the investigation, Commerce found the following companies to be cross-owned with Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.: Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; Hangzhou Five Star Aluminum Co., Ltd.; Hangzhou DingCheng Aluminum Co., Ltd.; Luoyang Longding Aluminum Co., Ltd.; Hangzhou Dingsheng Industrial Group Co., Ltd.; Hangzhou Dingsheng Import & Export Co., Ltd.; and Walson (HK) Trading Co., Limited. The subsidy rates apply to all cross-owned companies.

[12] In the investigation, Commerce found the following company to be cross-owned with Suzhou Manakin Aluminum Processing Technology Co., Ltd.: Manakin Indutries, LLC. The subsidy rates apply to all cross-owned company.

[13] *See* 19 CFR 351.224(b).

[14] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[15] *See Preliminary Results.*

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on welded line pipe from the Republic of Korea (Korea) and the Republic of Turkey (Turkey) would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable March 2, 2021.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2015, Commerce published the *AD Orders* on welded line pipe from Korea and Turkey.[1] On November 3, 2020, Commerce published the notice of initiation of the first sunset review of the *AD Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] In November 2020, Commerce received notices of intent to participate within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i) from Axis Pipe and Tube (Axis); California Steel Industries; Tex-Tube Company; Welspun Tubular LLC; Wheatland Tube Company; American Cast Iron Pipe Company (ACIPCO); Stupp Corporation; Maverick Tube Corporation (Maverick); and IPSCO Tubulars Inc. (collectively, domestic interested parties).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as manufacturers, producers, or wholesalers in the United States of a domestic like product.

On December 3, 2020, Commerce received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from respondent interested parties with respect to either of the orders covered by these sunset reviews.

On December 28, 2020, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *AD Orders.*

Scope of the Orders

The scope of these orders is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of these orders.

The welded line pipe that is subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum.[6] The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margins likely to prevail if the orders were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://acess.trade.gov.* A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the AD orders on welded line pipe from Korea and Turkey would be likely to lead to the continuation or recurrence of dumping at weighted-average dumping margins up to 6.22 percent for Korea and up to 22.95 percent for Turkey.

Administrative Protective Order (APO)

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

[1] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015) (*AD Orders*); *see also Welded Line Pipe from the Republic of Korea: Notice of Court Decision Not in Harmony With the Amended Final Determination in the Less-Than-Fair-Value Investigation, and Notice of Amended Final Determination and Amended Antidumping Duty Order,* 85 FR 19437 (April 7, 2020); *Welded Line Pipe from the Republic of Turkey: Notice of Court Decision Not in Harmony With the Final Determination in the Less Than Fair Value Investigation and Notice of Amended Final Determination and Amended Antidumping Duty Order,* 84 FR 4772 (February 19, 2019).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 69585 (November 3, 2020).

[3] *See* Axis' Letter, ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Certain Welded Line Pipe from Korea,'' dated November 13, 2020; Maverick's Letter, ''Notice of Intent to Participate in First Sunset Review of the Antidumping Duty Order on Welded Line Pipe from the Republic of Korea,'' dated November 16, 2020; ACIPCO's Letter, ''Welded Line Pipe from the Republic of Korea: Notice of Intent to Participate in Sunset Review,'' dated November 18, 2020; Axis' Letter, ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Certain Welded Line Pipe from Turkey,'' dated November 13, 2020; Maverick's Letter, ''Notice of Intent to Participate in First Sunset Reviews of the Antidumping and Countervailing Duty Orders on Welded Line Pipe from Turkey,'' dated November 16, 2020; and ACIPCO's Letter, ''Welded Line Pipe from the Republic of Turkey: Notice of Intent to Participate in Sunset Review,'' dated November 18, 2020.

[4] *See* Domestic Interested Parties' Letter, ''Welded Line Pipe from the Republic of Korea: Substantive Response to the Notice of Initiation of Sunset Review,'' dated December 3, 2020; *see also* Domestic Interested Parties' Letter, ''Welded Line Pipe from Turkey: Substantive Response of Domestic Producers to Commerce's Notice of Initiation of Five-Year (''Sunset'') Reviews,'' dated December 3, 2020.

[5] *See* Commerce's Letter, ''Sunset Review for November 2020,'' dated December 23, 2020.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited First Sunset Reviews of the Antidumping Duty Orders on Welded Line Pipe from the Republic of Korea and the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: February 19, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–04263 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA904]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The Center of Independent Experts (CIE) will be hold a web conference in March.

DATES: The meeting will be held on Monday, March 22, 2021 through Thursday, March 25, 2021, from 9 a.m. to 5 p.m., Pacific Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://archive.fisheries.noaa.gov/afsc/refm/stocks/plan_team/2021_crab_cie/.*

Council address: Alaska Fishery Science Center, 7600 Sand Point Way, Seattle, WA 98115; telephone: (206) 526–4000.

FOR FURTHER INFORMATION CONTACT: Cody Szuwalski, Alaska Fishery Science Center staff; phone: (206) 526–4536; email: *cody.szuwalski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, March 22, 2021 Through Thursday, March 25, 2021

The CIE is to review the Eastern Bering Sea (EBS) snow crab assessment model and Bristol Bay red king crab stock assessment model.

The agenda is subject to change, and the latest version will be posted at *https://archive.fisheries.noaa.gov/afsc/refm/stocks/plan_team/2021_crab_cie/* prior to the meeting, along with meeting materials.

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

Dated: February 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–04268 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Data Collections To Support Comprehensive Economic and Socio-Economic Evaluations of the Fisheries in Regions of the United States Affected by Catastrophic Events

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 3, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0767 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Dr. Joe Terry, Office of Science and Technology, 1315 East-West Hwy., Bldg. SSMC3, Silver Spring, MD 20910–3282, (858) 454–2547, *joe.terry@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for revision and extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) Office of Science and Technology's Economics and Social Analysis Division seeks to conduct as-needed data collections to support mandated comprehensive economic and socio-economic evaluations of the fisheries in regions of the United States affected by catastrophic events. The six NMFS Fisheries Science Centers will assist in conducting the proposed collections.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) includes the following requirement (see SEC. 315 (c)), ''Within 2 months after a catastrophic regional fishery disaster the Secretary [of Commerce] shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region's fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.'' The MSA permits the proposed collection and NMFS would conduct it under the MSA.

This collection will provide information that NMFS will use to produce the comprehensive economic and socio-economic evaluation required by the MSA.

For a rapid catastrophic event, such as a hurricane, NMFS seeks to collect data on the immediate and long-term disruption and impediments to recovery of normal business practices to the commercial and recreational fishing industries, including fishing dependent businesses. In addition, for an ongoing event, such as a pandemic or red tide that lingers for many months in the same region(s), NMFS seeks to collect data quarterly to semi-annually as needed to evaluate the ongoing event. NMFS would collect the data from

commercial and recreational for hire fishermen, fish dealers, seafood processors, bait and tackle shops, and boat repair/marine supply/other associated businesses.

NMFS will use the data to prepare the required economic and socio-economic evaluations and to improve research and analysis of potential fishery management actions by understanding the immediate, quarterly or semi-annual, and/or long-term compounding effects of catastrophic events on the commercial and recreational fishing industries and the communities most dependent on those industries.

The proposed revisions would expand the coverage of the currently approved information collection in two ways. First, they would expand the types of catastrophic events from ''hurricanes and other climate related natural disasters'' to events including hurricanes, tsunamis, floods, freshwater intrusions, severe harmful algal blooms (*e.g.,* red tides), extreme temperatures, oil spills, and pandemics. Second, they would extend the geographic scope from the ''Eastern, Gulf Coast and Caribbean Territories of the United States'' to all regions and territories of the United States. These proposed expansions are reflected in the request to change the title from ''Assessment of the Social and Economic Impact of Hurricanes and Other Climate Related Natural Disasters on Commercial and Recreational Fishing Industries in the Eastern, Gulf Coast and Caribbean Territories of the United States'' to ''Data Collections to Support Comprehensive Economic and Socio-Economic Evaluations of the Fisheries in Regions of the United States Affected by Catastrophic Events.'' NMFS will improve the survey instruments and collection methods based on lessons learned from conducting and assessing the previous information collections. The frequency of reporting will be from one to four times a year for each catastrophic event.

II. Method of Collection

NMFS will use a combination of in-person, telephone and video call interviews, as well as mail and internet surveys, to collect the required information.

III. Data

OMB Control Number: 0648–0767.

Form Number(s): None.

Type of Review: Regular submission [revision of a currently approved collection].

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 10,400.

Estimated Time per Response: Rapid Response and Quarterly to Semi-Annual Fisherman Survey: 20 min; Long Term Response Fisherman Survey: 20 min; Rapid Response and Quarterly to Semi-Annual Fishing Related Business Survey: 20 min; Long Term Response Fishing Related Business Survey: 20 min.

Estimated Total Annual Burden Hours: 3,463.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act SEC. 315(c).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–04285 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA870]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting; Cancellation

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

ACTION: Notice of cancellation of SEDAR 72 Assessment Webinar I for Gulf of Mexico gag grouper.

SUMMARY: The SEDAR 72 stock assessment process for Gulf of Mexico gag grouper will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 72 Assessment Webinar I was scheduled for March 16, 2021, from 11 a.m. to 1 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting was to be held via webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The meeting notice published on February 18, 2021 (86 FR 10039). This notice announces that the meeting is cancelled and will be rescheduled at a later date.

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

Dated: February 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–04257 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA911]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will

hold meetings of its Non-commercial Fisheries Advisory Committee (NCFAC), American Samoa Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP), Mariana Archipelago FEP-Guam AP, Fishing Industry Advisory Committee (FIAC), Hawaii Archipelago FEP AP, and Mariana Archipelago FEP-Commonwealth of the Northern Mariana Islands (CNMI) AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held March 10, 2021 through March 13, 2021. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Each of the meetings will be held by web conference via Webex. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The NCFAC will meet on Wednesday, March 10, 2021, from 1:30 p.m. to 4:30 p.m.; The American Samoa Archipelago FEP AP will meet on Wednesday, March 10, 2021, from 5 p.m. to 7 p.m.; the Mariana Archipelago FEP-Guam AP will meet on Thursday, March 11, 2021, from 6:30 p.m. to 8:30 p.m.; the FIAC will meet on Thursday, March 11, 2021, from 2 p.m. to 5 p.m.; the Hawaii Archipelago FEP AP will meet on Friday, March 12, 2021, from 9 a.m. to 12 noon; and the Mariana Archipelago FEP–CNMI AP will meet on Saturday, March 13, 2021, from 9 a.m. to 12 noon All times listed are local island times except for the NCFAC and FIAC are Hawaii Standard Time.

Public comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the NCFAC Meeting

Wednesday, March 10, 2021, 1:30 p.m.–4:30 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. NCFAC Task and Scope of Activities
3. Council Action Items
   - A. Main Hawaiian Islands Deep 7 Bottomfish ACL
   - B. Guam Bottomfish Rebuilding Plan
   - C. Protected Species Updates
4. Discussion on Non-Commercial Data Collection Efforts
   - A. Fishermen Efforts
   - B. National Academy of Science Study on Recreational Fisheries
   - C. Council Initiatives
5. Discussion on Non-Commercial Data Reporting
   - A. Identifying Available Data and Needs
   - B. Annual Stock Assessment and Fishery Evaluation Report Non-Commercial Module
6. Potential Impacts from Executive Orders and Legislation
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the American Samoa FEP AP Meeting

Wednesday, March 10, 2021, 5 p.m.–7 p.m. (American Samoa Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   - A. Options for Managing the American Samoa Bottomfish Stocks
   - B. Catch-It, Log-It Implementation
   - C. Status of the American Samoa Large Vessel Prohibited Area
   - D. Status of Fishery Biological Opinions
4. American Samoa Reports
5. Report on American Samoa Archipelago FEP AP Plan Activities
6. Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the Mariana Archipelago FEP-Guam AP Meeting

Thursday, March 10, 2021, 6:30 p.m.–8:30 p.m. (Marianas Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   - A. Guam Bottomfish Rebuilding Plan
   - B. Catch-It, Log-It Implementation
   - C. Status of Fishery Biological Opinions
4. Guam Reports
5. Report on Mariana Archipelago FEP Advisory Panel Plan Activities
6. Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the FIAC Meeting

Thursday, March 11, 2021, 2 p.m.–5 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Status Report on October 2020 FIAC Recommendations
3. Council Actions for 185th Meeting
   - A. Wire Leader Regulatory Amendment in Hawaii Longline Fisheries
   - B. U.S. Catch Limits for North Pacific Striped Marlin
   - C. American Samoa Options for Bottomfish Stock Management
   - D. Guam Options for Bottomfish Stock Rebuilding Plan
   - E. Hawaii Update to the Deep 7 Bottomfish Annual Catch Limits
4. Status of the Green Sea Turtle Population in the Marianas
5. Legislative and Administrative Issues
6. 2021 Hawaii Small Boat Survey
7. Brief Overview of Pelagic and International Management
8. Workshop on Bigeye Tuna Management in Western and Central Pacific Ocean Longline Fisheries
9. Other Issues
10. Public Comment
11. Discussion and Recommendations

Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

Friday, March 12, 2021, 9 a.m.–12 Noon (Hawaii Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   - A. Main Hawaiian Islands Deep 7 Bottomfish ACL Specification
   - B. Regulatory Changes for the Prohibition of Wire Leaders in Hawaii Longline Fisheries
   - C. U.S. Catch Limits for North Pacific Striped Marlin
   - D. Seabird Mitigation Measures in the Hawaii Longline Fisheries
   - E. Status of Fishery Biological Opinions
4. Report on the Hawaii Reef Fish Life History Research
5. Hawaii Reports
6. Report on Hawaii Archipelago FEP AP Plan Activities
7. Fishery Issues and Activities
8. Public Comment
9. Discussion and Recommendations
10. Other Business

Schedule and Agenda for the Mariana Archipelago FEP–CNMI AP Meeting

Saturday, March 13, 2021, 9 a.m.–12 Noon (Marianas Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   - A. Guam Bottomfish Update
   - B. Catch-It, Log-It Implementation
   - C. Status of Fishery Biological Opinions
4. CNMI Reports

5. Report on Mariana Archipelago FEP AP Plan Activities
6. Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–04269 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA905]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Mackerel Advisory Panel (AP) via webinar.

DATES: The webinar will convene on Wednesday, March 24, 2021, from 9 a.m. to 5 p.m., EDT.

ADDRESSES: The meeting will be held via webinar. Visit the Gulf Council website for registration and log in information.

Council address: Gulf of Mexico Fishery Management Council, 4701 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Natasha Mendez-Ferrer, Fishery Biologist, Gulf of Mexico Fishery Management Council; *natasha.mendez@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

Wednesday, March 24, 2021; 9 a.m.–5 p.m.; EDT

The meeting will begin with Introduction; Election of Chair and Vice-Chair;

Adoption of Agenda; Approval of Minutes from the October 9, 2018 webinar; and, review of Scope of Work with its members.

The AP will receive an update on the Coastal Migratory Pelagic Landings; SEDAR 28 Update: Gulf Migratory Group Cobia—with presentations on the stock assessment and results, Something's Fishy, and Draft Management Alternatives. The AP will then provide recommendations.

Following lunch, the AP will receive an update on SEDAR 38: Gulf of Mexico King Mackerel—with presentations on the stock assessment and results, Something's Fishy, and scoping of management alternatives. The AP will then provide recommendations.

The AP will receive a summary on the Coastal Migratory Pelagics Amendment 34 for Atlantic King Mackerel; and will review a presentation and discuss Commercial Electronic Logbooks.

The AP will receive any public comment; and discuss any Other Business items.

—*Meeting Adjourns*

The meeting will be held via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Mackerel Advisory Panel meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

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

Dated: February 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–04266 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA846]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Coonamessett Farm Foundation contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow a participating party/charter fishing vessel to temporarily possess undersized black sea bass for tagging and biological sampling purposes. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before March 17, 2021.

ADDRESSES: You may submit written comments by the following method:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on CFF Black Sea Bass Tagging EFP.'' If you cannot submit a comment through this method, please contact Laura Hansen at 978–281–9225, or email at *Laura.Hansen@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225, *Laura.Hansen@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Coonamessett Farm Foundation (CFF) submitted a complete application for an Exempted Fishing Permit (EFP) on October 26, 2020, to conduct fishing activities that the regulations would otherwise restrict. The EFP would authorize a participating vessel to temporarily possess undersize black sea bass while conducting tagging procedures and biological sampling. This research is designed to tag and release black sea bass to study movement patterns, habitat usage, and migratory cycles for up to the 2-year battery life of the telemetry tags.

If approved, this research would be conducted over the course of two 3-day sampling trips in April and August of 2021, for a total of 6 research fishing days. All fishing would be conducted using rod and reel gear on a contracted charter vessel in state and Federal waters off the coasts of Maryland, Virginia, and North Carolina. The exact fishing locations would be determined by the vessel captain and recorded via GPS.

All black sea bass caught on directed research trips under this EFP would be placed in a live well, and the length and sex of each individual would be recorded before tagging. Each black sea bass would then be tagged with an internal anchor spaghetti tag, allowed to recover from the procedure, assessed for barotrauma, and released back into the water using a pressure-activated recompression descending release device. All non-target species would be returned to the water as quickly as possible, and no catch would be retained for sale. CFF personnel would accompany all trips and oversee these research activities.

In addition to the spaghetti tags, 77 black sea bass would be tagged with specialty tags/equipment through this project, with the type of specialized tag used and data gathered depending on the size and vigor of each fish. A total of 40 fish would receive acoustic transmitters to record temperature. An additional 34 slightly larger fish (greater than 25 cm) would receive an archival tag that records temperature, depth, and conductivity, and 3 fish (greater than 46 cm) will be affixed with satellite tags. The satellite tags measure temperature, depth, light level, and geolocation. CFF will also distribute 2,000 Floy internal anchor tags to collaborators to opportunistically tag black sea bass.

CFF is requesting temporary exemptions from the recreational possession limit and minimum size restrictions in the Black Sea Bass Fishery Management Plan found at 50 CFR 648.145(a) and § 648.147(b), respectively, to sample and tag all black sea bass during these selected fishing trips. Funding for this research has been awarded under a NOAA Chesapeake Bay Fisheries Research grant (NA18NMF4570257).

If approved, CFF may request minor modifications and extensions to the EFP throughout the study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: February 25, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–04264 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Western Pacific Community Development Program Process

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 3, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0612 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kate Taylor, National Marine Fisheries Service, Pacific Islands Regional Office, 1845 Wasp Blvd. 176, Honolulu, HI 96818. Telephone: (808) 725–5182; Email: *kate.taylor@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. The Federal regulations at 50 CFR part 665 authorize the Regional Administrator of the National Marine Fisheries Service (NMFS), Pacific Island Region to provide eligible western Pacific communities with access to fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation, possibly due to economic, regulatory, or other barriers. To be eligible to participate in the western Pacific community development program, a community must meet the criteria set forth in 50 CFR part 665.20, and submit a community development plan that describes the purposes and goals of the plan, the justification for proposed fishing activities, and the degree of involvement by the indigenous community members, including contact information.

This collection of information provides NMFS and the Western Pacific Fishery Management Council (Council) with data to determine whether a community that submits a community development plan meets the regulatory requirements for participation in the program, and whether the activities proposed under the plan are consistent with the intent of the program, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws. The information is also important for evaluating potential impacts of the proposed community development plan activities on fish stocks, endangered species, marine mammals, and other components of the affected environment for the purposes of compliance with the National Environmental Policy Act, the Endangered Species Act and other applicable laws.

II. Method of Collection

The collection of information of a community development plan involves no forms and respondents have a choice of submitting information by electronic transmission or by mail. Instructions on how to submit a community development plan can be found on the Council's website at *http://www.wpcouncil.org/western-pacific-community-development-program/.*

III. Data

OMB Control Number: 0648–0612.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for profit organizations, and individuals or households.

Estimated Number of Respondents: 5.

Estimated Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 30 hours.

Estimated Total Annual Cost to Public: $50 in recordkeeping/reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

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

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–04287 Filed 3–1–21; 8:45 am]

BILLING CODE 3310–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Customer Surveys

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 3, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0342 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Adrienne Thomas at *Adrienne.Thomas@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved generic information collection.

This collection follows the guidelines contained in the OMB Resource Manual for Customer Surveys. In accordance with Executive Order 12862, the National Performance Review, and good management practices, National Oceanic and Atmospheric Administration (NOAA) offices seek approval to continue to gather customer feedback on services and/or products which can be used in planning for service/product modification and prioritization. Under this generic clearance, individual offices would use approved questionnaires and develop new questionnaires, as needed, by selecting subsets of the approved set of collection questions and tailoring those specific questions to be meaningful for their particular programs. These proposed questionnaires would then be submitted to OMB using a fast-track request for approval process, for which separate **Federal Register** notices are not required. Surveys currently typically include IT and website satisfaction surveys, Weather Service product surveys, and National Marine Sanctuary participation surveys, among others.

This generic clearance will not be used to survey any bodies NOAA regulates unless precautions are taken to ensure that the respondents believe that they are not under any risk for not responding or for the contents of their responses, *e.g.,* in no survey to such a population will the names and addresses of respondents be required.

Two sets of survey questions are used for generation of program-level questionnaires. Quantitative questions seek to obtain numerical ratings from respondents on their satisfaction with various aspects of the product or service they obtained—satisfaction with the quality of the product, the courtesy of the staff, the format of and documentation for data received, and similar standard types of questions. The offices using such questions are able to determine which aspects of their program need improvement or have improved. Qualitative questions are more focused on who is using the product and service, how it is being used, and the medium or format in which the respondent would like to see data provided.

II. Method of Collection

Information will be collected via email or online survey.

III. Data

OMB Control Number: 0648–0342.

Form Number(s): None.

Type of Review: Regular submission [extension of a current information collection].

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Estimated Number of Respondents: 24,000.

Estimated Time per Response: 5–10 minutes per response.

Estimated Total Annual Burden Hours: 22,500.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority:

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–04286 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA900]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council is convening its Scientific and Statistical Committee (SSC) via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Friday, March 26, 2021 beginning at 8:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7544505055762063375.* Call in information: +1 (562) 247–8321, Access Code 658–624–262.

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to review initial information from the Atlantic Herring Plan Development Team (PDT) and provide the PDT guidance on developing rebuilding plan alternatives for Atlantic Herring. They will receive a presentation on the Northeast Fisheries Science Center's (NEFSC) State of the Ecosystem Report and provide the NEFSC any recommendations about revisions. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–04267 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2021–0012]

Grant of Interim Extension of the Term of U.S. Patent No. 8,858,612; Reducer®

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting a one-year interim extension of the term of U.S. Patent No. 8,858,612.

FOR FURTHER INFORMATION CONTACT: Ali Salimi by telephone at 571–272–0909; by mail marked to his attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to his attention at 571–273–0909; or by email to *ali.salimi@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On February 19, 2021, Neovasc Medical Ltd., the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 8,858,612. The patent claims methods of using a catheter delivered implantable device, Reducer®. The application for patent term extension indicates that a Premarket Approval Application (PMA) P190035 was submitted to the Food and Drug Administration (FDA) on December 31, 2019.

Review of the patent term extension application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year

as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period will continue beyond the extended expiration date of the patent, March 27, 2021, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 8,858,612 is granted for a period of one year from the extended expiration date of the patent.

Robert Bahr,

Deputy Commissioner for Patents, United States Patent and Trademark Office.

[FR Doc. 2021–04170 Filed 3–1–21; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open and closed virtual meetings.

SUMMARY: This notice sets forth the agenda for National Assessment Governing Board (hereafter referred to as Governing Board) meetings scheduled on multiple dates starting on March 1, 2021 and ending on March 5, 2021. This notice provides information to members of the public who may be interested in accessing the virtual meeting and/or providing written comments related to the work of the Governing Board. Notice of the full Board meeting is required under the Federal Advisory Committee Act (FACA). This notice is being published less than 15 days prior to the meeting due to delays in finalizing the meeting agenda, which was dependent on deliberations of the Governing Board's standing committees. This notice is being published less than 15 days prior to the meeting due to delays in finalizing the meeting agenda, which was dependent on deliberations of the Governing Board's standing committees. Due to the COVID–19 pandemic, there were significant delays in scheduling the standing committee meetings.

Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work on various dates from March 1–3, 2021 based on ongoing committee agenda topics and follow-up activities as reported in the Governing Board's committee meeting minutes available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.*

Four standing committee meetings will convene prior to the March 4–5, 2021 plenary sessions of the Governing Board meeting. Meeting agendas will be posted at *www.nagb.gov* no later than February 26, 2021. All meetings are convened in Eastern Time.

Monday, March 1, 2021, Reporting & Dissemination Committee, 10:00 a.m.–12:15 p.m.

Tuesday, March 2, 2021, Committee on Standards, Design & Methodology, 2:00 p.m.–3:50 p.m.

Wednesday, March 3, 2021, Executive Committee, 11:00 a.m.–1:00 p.m.

Wednesday, March 3, 2021, Assessment Development Committee: 5:15 p.m.–7:45 p.m.

The plenary sessions of the March 4–5, 2021 quarterly meeting of the Governing Board will be held on the following dates and times:

Thursday, March 4, 2021: Open Meeting: 12:15–5:30 p.m. (EST)

Friday, March 5, 2021: Closed Meetings: 12:00–1:50 p.m. (EST); Open Meeting: 1:55–5:30 p.m.

March 4, 2021: Open Meeting:

On Thursday, March 4, 2021, the Governing Board will meet in open session from 12:15 p.m. to 5:30 p.m.

From 12:15 p.m. to 12:30 p.m. Chair Haley Barbour will welcome members; review and approve the March 4–5, 2021 quarterly Governing Board meeting agenda and approve minutes from the November 19–20, 2020 quarterly Governing Board meeting. The Governing Board will then take action on a release plan for the 2019 National Assessment of Educational Progress (NAEP) Science Report Card.

From 12:30 p.m. to 1:30 p.m. two updates on ongoing work will be provided. Mark Schneider, Director of the Institute of Education Sciences, will provide an update and Lesley Muldoon, Executive Director of the Governing Board, will update the Governing Board ongoing work.

From 1:30 p.m. to 3:00 p.m. the Governing Board will discuss if and how NAEP can play a role in national conversations and actions to create more equitable outcomes for students. This discussion will be led by a panel of experts who will reflect on recommendations developed by a Committee convened by the National Academies of Sciences, Engineering, and Medicine on Developing Indicators of Educational Equity.

After a 15-minute break, from 3:15 p.m. to 5:30 p.m. the Governing Board will convene a symposium on Reading Comprehension in Large-Scale Assessment. The symposium will be moderated by Patrick Kelly, Governing Board member, and include the participation of several reading experts. The March 4, 2021 session of the Governing Board meeting will adjourn at 5:30 p.m.

March 5, 2021: Closed Meetings:

On Friday, March 5, 2021, the Governing Board meeting will convene in two closed sessions from 12:00 p.m. to 1:50 p.m. Eastern Time.

During the first closed session convened from 12:00 p.m. to 12:30 p.m. the Governing Board will receive a briefing from the Nominations Committee on its recommendations for candidates to fill board vacancies. The Governing Board will review the recommendations for the final slate of candidates for submission to the Secretary of Education for appointments that begin October 1, 2021. These discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code. The Governing Board will take a short break to transition to the next closed session.

On Friday, March 5, 2021, the second closed session will take place from 12:35 p.m. to 1:50 p.m. Peggy Carr, Associate Commissioner, National Center for Education Statistics, will provide a briefing on the NAEP Budget and Assessment Schedule. The briefing and Governing Board discussions may impact current and future NAEP contracts and budgets and must be kept confidential to maintain the integrity of the federal acquisition process. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The Governing Board will meet in open session thereafter, from 1:55 p.m. to 5:30 p.m. From 1:55 p.m. to 2:00 p.m., the Governing Board will discuss and take action on two agenda items—an updated NAEP Assessment Schedule and on finalists for Governing Board vacancies for terms that will begin on October 1, 2021 for submission to the Secretary of Education for consideration and appointment.

From 2:00 p.m. to 3:15 p.m., the Governing Board will receive updates from two standing Task Forces established by the Governing Board—

the Council of Chief State School Officers State Policy Task Force and the Council of Great City Schools Trial Urban District Assessment (TUDA) Policy Task Force. Following a 15-minute break, the Governing Board will meet from 3:30 p.m. to 5:25 p.m. to receive a briefing on the NAEP Reading Framework and engage in policy discussions.

From 5:25 p.m. to 5:30 p.m. the Governing Board Chair Haley Barbour and Lesley Muldoon, Governing Board Executive Director, will discuss next steps and provide concluding remarks. The March 5, 2021 session of the Governing Board meeting will adjourn at 5:30 p.m. The Quarterly Board meeting and committee meeting agendas, together with meeting materials shall be posted on the Governing Board's website at *www.nagb.gov* no later than Friday, February 26, 2021. Participation in all open sessions will be available via online registration only at *www.nagb.gov* 5 working days prior to each meeting.

ADDRESSES: Virtual Meetings.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Pub. L. 107–279. Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: (1) Selecting subject areas to be assessed; (2) developing assessment frameworks and specifications; (3) developing appropriate student achievement levels for each grade and subject tested; (4) developing standards and procedures for interstate and national comparisons; (5) improving the form and use of NAEP; (6) developing guidelines for reporting and disseminating results; and (7) releasing initial NAEP results to the public.

Written comments related to the work of the Governing Board may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above).

Public Participation: The public may access and participate in the open sessions of the meeting via advance registration. A link to the registration page will be posted on *www.nagb.gov* five working days prior to each meeting date.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov five working days prior to each meeting.* The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following each meeting.

Reasonable Accommodations: The meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than ten working days prior to each meeting.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* 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 Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. 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.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U. S. Department of Education.

[FR Doc. 2021–04288 Filed 3–1–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0028]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; American Indian Tribally Controlled Colleges and Universities Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement without change of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Steve Sniegoski, 202–453–7542.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how

might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: American Indian Tribally Controlled Colleges and Universities Program.

OMB Control Number: 1840–0817.

Type of Review: A reinstatement without change of a previously approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 70.

Total Estimated Number of Annual Burden Hours: 840.

Abstract: The information is required of institutions of higher education that apply for grants under the Tribally Controlled Colleges and Universities Program authorized under Title III, Parts A and F, of the Higher Education Act of 1965, as amended. This information will be used in making funding recommendations. This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection request.

Dated: February 25, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–04252 Filed 3–1–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0186]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Survey on Use of Funds Under Title II, Part A

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2021 .

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, 202–453–6136.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey on Use of Funds Under Title II, Part A.

OMB Control Number: 1810–New.

Type of Review: New information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 416.

Abstract: The U.S. Department of Education (the Department) is requesting clearance to continue collecting data from states annually about how Title II, Part A funds are used; how funds are used to improve equitable access to teachers for-low income and minority students; and where applicable, evaluation and retention data for teachers, principals, and other school leaders. The reporting requirements are outlined in Section 2104(a) of the Elementary and Secondary Education Act (ESEA), as authorized by the Every Student Succeeds Act of 2015 (ESSA).

The survey will include the universe of states, the District of Columbia, and Puerto Rico. The information obtained from the survey will provide the Department with a description of how Title II, Part A State activities funds are used by teach State. In addition, the survey will provide data on teacher, principal, and other school leader evaluation and retention. The survey will be sent to State Title II, Part A coordinators in each of the 50 states, District of Columbia, and Puerto Rico. The survey will be administered using an electronic instrument.

Dated: February 24, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–04172 Filed 3–1–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0195]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Blue Ribbon Schools Program

AGENCY: Office of Communication and Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment''

checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Aba Kumi, 202–401–1767.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Blue Ribbon Schools Program.

OMB Control Number: 1860–0506.

Type of Review: An extension of a currently approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 420.

Total Estimated Number of Annual Burden Hours: 16,695.

Abstract: Each year since 1982, the U.S. Department of Education's National Blue Ribbon Schools Program has sought out and celebrated great American schools; schools that are demonstrating that all students can achieve to high levels. The purpose of the Program is to honor public and private elementary, middle and high schools based on their overall academic excellence or their progress in closing achievement gaps among different groups of students. The Program is part of a larger U.S. Department of Education effort to identify and disseminate knowledge about best school leadership and teaching practices.

Dated: February 24, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–04171 Filed 3–1–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Research Networks Focused on Critical Problems of Education Policy and Practice, and the Transformative Research in the Education Sciences Grant Programs; Reopening

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: On November 20, 2020, we published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2021 Research Networks Focused on Critical Problems of Education Policy and Practice and the Transformative Research in the Education Sciences Grant Programs competitions, Assistance Listing Numbers 84.305N and 84.305T. The NIA established a deadline date of February 25, 2021, for the transmittal of applications. For certain potential eligible applicants described elsewhere in this notice, we are reopening these competitions until March 11, 2021.

DATES: Deadline for Transmittal of Applications for Applicants Meeting the Eligibility Criteria in this Notice: March 11, 2021.

FOR FURTHER INFORMATION CONTACT: For the Research Networks Focused on Critical Problems of Education Policy and Practice competition (84.305N): Meredith Larson. Telephone: (202) 245–7037. Email: *Meredith.Larson@ed.gov.* For the Transformative Research in the Education Sciences competition (84.305T): Erin Higgins. Telephone: (202) 706–8509. Email: *Erin.Higgins@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On November 20, 2020, we published in the **Federal Register** (85 FR 74328) an NIA for the FY 2021 Research Networks Focused on Critical Problems of Education Policy and Practice and the Transformative Research in the Education Sciences Grant Programs. The application deadline in the NIA was February 25, 2021. We are reopening these competitions for potential applicants that meet the eligibility criteria set out below and applicants that do not meet that eligibility criteria but have planned subawardees and contractors identified in their application that meet that criteria. The eligibility criteria are as follows:

Eligibility: The reopening of the competitions in this notice applies to eligible applicants under Research Networks Focused on Critical Problems of Education Policy and Practice and the Transformative Research in the Education Sciences Grant Programs, Assistance Listing Numbers 84.305N and 84.305T, that are located in an area for which the President has issued an emergency declaration (see www.fema.gov/disasters/), in Louisiana (FEMA Disaster designation 3556), in Oklahoma (FEMA Disaster designation 3555), and Texas (FEMA Disaster designation 3554).

The reopening of these competitions also applies to applicants that are not located in one of these areas but have planned subawardees and contractors identified in their application that are located in one of these areas.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications for these three States.

Applicants that have already timely submitted applications under the FY 2021 Networks Focused on Critical Problems of Education Policy and Practice and the Transformative Research in the Education Sciences Grant Programs competitions may resubmit applications but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received. Applications that did not meet the original deadline must be resubmitted to be considered for review.

Program Authority: 20 U.S.C. 9501 *et seq.*

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or

text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

Craig Stanton,

Deputy Director for Administration and Policy, Institute of Education Sciences.

[FR Doc. 2021–04284 Filed 3–1–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0029]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Alaska Native and Native Hawaiian-Serving Institutions Program, Part A and Part F

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement without change of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Robyn Wood, (202) 453–7744.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants Under the Alaska Native and Native Hawaiian-Serving Institutions Program, Part A and Part F.

OMB Control Number: 1840–0810.

Type of Review: Reinstatement without change of a previously approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 75.

Total Estimated Number of Annual Burden Hours: 12,000.

Abstract: The Department of Education, Office of Postsecondary Education, manages the Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Program (Part A and Part F), which provides grant funds to eligible institutions that have either a population of 20% Alaska Native students or 10% Native Hawaiian students. The grant program is competitive and requires applicants to submit an application for review.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: February 25, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–04243 Filed 3–1–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order on Intent To Revoke Market-Based Rate Authority

	Docket Nos
Electric Quarterly Reports	ER02–2001–020
Palama, LLC	ER10–2809–000
City Power Marketing, LLC	ER10–3157–000
Oracle Energy Services, LLC.	ER11–2436–000
EmpireCo Limited Partnership.	ER11–2882–001
Allied Energy Resources Corporation.	ER11–4722–000
Entra Energy LLC	ER12–1137–000
BlueRock Energy, Inc.	ER12–1269–000
Power Dave Fund LLC	ER12–2217–004
ESS Lewes Project, LLC	ER17–3–001
ESS Snook Project, LLC	ER17–94–001

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and 18 CFR part 35 (2020), require, among other things, that all rates, terms, and conditions for jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports.[1]

[1] *Revised Pub. Util. Filing Requirements,* Order No. 2001, 99 FERC ¶ 61,107, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, 125 FERC ¶ 61,103 (2008). *See also Filing Requirements for Elec. Util. Serv. Agreements,* 155 FERC ¶ 61,280, *order on reh'g and clarification,* 157 FERC ¶ 61,180

Continued

2. The Commission requires sellers with market-based rate authorization to file Electric Quarterly Reports summarizing contractual and transaction information related to their market-based power sales as a condition for retaining that authorization.[2] Commission staff's review of the Electric Quarterly Reports indicates that the following 10 public utilities with market-based rate authorization have failed to file their Electric Quarterly Reports: Palama, LLC; City Power Marketing, LLC; Oracle Energy Services, LLC; EmpireCo Limited Partnership; Allied Energy Resources Corporation; Entra Energy LLC; BlueRock Energy, Inc.; Power Dave Fund LLC; ESS Lewes Project, LLC; and ESS Snook Project, LLC. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[3]

4. The Commission further stated that,

> [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[4]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of market-based rate sellers that failed to submit their Electric Quarterly Reports.[5]

6. Sellers must file Electric Quarterly Reports consistent with the procedures set forth in Order Nos. 2001, 768,[6] and 770.[7] The exact filing dates for Electric Quarterly Reports are prescribed in 18 CFR 35.10b. As noted above, Commission staff's review of the Electric Quarterly Reports for the period up to the third quarter of 2020 identified 10 public utilities with market-based rate authorization that failed to file Electric Quarterly Reports. Commission staff contacted or attempted to contact these entities to remind them of their regulatory obligations. Despite these reminders, the public utilities listed in the caption of this order have not met these obligations. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers have already filed their Electric Quarterly Reports in compliance with the Commission's requirements, those sellers' inclusion herein is inadvertent. Such market-based rate sellers are directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying themselves and providing details about their prior filings that establish that they complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel their market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make the filings required in this order, the Commission will revoke that public utility's market-based rate authorization and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued: February 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04260 Filed 3–1–21; 8:45 am]

BILLING CODE 6717–01–P

(2016) (clarifying Electric Quarterly Reports reporting requirements and updating Data Dictionary).

[2] *See Refinements to Policies and Procedures for Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.,* Order No. 816, 153 FERC ¶ 61,065 (2015), *order on reh'g,* Order No. 816–A, 155 FERC ¶ 61,188 (2016). *See also Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.,* Order No. 697, 119 FERC ¶ 61,295, at P 3, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 123 FERC ¶ 61,055, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, 125 FERC ¶ 61,326 (2008), *order on reh'g,* Order No. 697–C, 127 FERC ¶ 61,284 (2009), *order on reh'g,* Order No. 697–D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011).

[3] Order No. 2001, 99 FERC ¶ 61,107 at P 222.

[4] *Id.* P 223.

[5] *See, e.g., Elec. Q. Rep.,* 82 FR 60,976 (Dec. 26, 2017); *Electric Quarterly Reports,* 80 FR 58,243 (Sep. 28, 2015); *Elec. Q. Rep.,* 79 FR 65,651 (Nov. 5, 2014).

[6] *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act,* Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g,* Order No. 768–A, 143 FERC ¶ 61,054 (2013), *order on reh'g,* Order No. 768–B, 150 FERC ¶ 61,075 (2015).

[7] *Revisions to Elec. Q. Rep. Filing Process,* Order No. 770, 141 FERC ¶ 61,120 (2012).

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:

Docket Number: PR21–31–000.

Applicants: Southcross CCNG Transmission Ltd.

Description: Tariff filing per 284.123(b),(e)+(g): Revision to Statement of Operating Conditions to be effective 2/22/2021.

Filed Date: 2/22/2021.

Accession Number: 202102225074

Comments Due: 5 p.m. ET 3/15/2021

284.123(g) Protests Due: 5 p.m. ET 4/23/2021.

Docket Numbers: RP21–509–000.

Applicants: Golden Pass Pipeline LLC.

Description: Golden Pass Pipeline LLC submits tariff filing per 154.203: GPPL Annual Retainage Report for 2021 to be effective 4/1/2021.

Filed Date: 02/23/2021.

Accession Number: 20210223–5118.

Comment Date: 5 p.m. ET 3/8/2021.

Docket Numbers: RP21–510–000.

Applicants: Vector Pipeline L.P.

Description: Vector Pipeline L.P. submits tariff filing per 154.204: Negotiated Rate Filing—BWEC to be effective 3/1/2021.

Filed Date: 02/23/2021.

Accession Number: 20210223–5145.

Comment Date: 5 p.m. ET 3/8/2021.

Docket Numbers: RP21–511–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: El Paso Natural Gas Company, L.L.C. submits tariff filing per 154.204: Negotiated Rate Agreements

Filing (Sempra_Marathon) to be effective 4/1/2021.

Filed Date: 02/23/2021.

Accession Number: 20210223–5178.

Comment Date: 5 p.m. ET 3/8/2021.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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(s). 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: February 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04258 Filed 3–1–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos: AF21–6–000; AD20–6–000]

RTO/ISO Credit Principles and Practices, Credit Reforms in Organized Wholesale Electric Markets; Supplemental Notice of Technical Conference

As first announced in the Notice of Technical Conference issued in this proceeding on November 4, 2020, the Federal Energy Regulatory Commission (Commission) will convene a staff-led technical conference in the above referenced proceeding on Thursday, February 25, 2021 from 9:00 a.m. to 5:00 p.m. and Friday, February 26, 2021 from 9:00 a.m. to 1:00 p.m. Eastern Time. The conference will be held electronically and broadcast on the Commission's website. Commissioners may attend and participate. This conference will discuss principles and best practices for credit risk management in organized wholesale electric markets.

We note that discussions at the conference may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to: DC Energy, LLC v. PJM Interconnection, L.L.C., Docket No. EL18–170; Shell Energy North America (US), L.P., Docket No. EL20–49; PJM Interconnection, L.L.C., Docket No. ER21–520; ISO New England Inc., New England Power Pool Participants Committee, Docket No. ER21–816; Midcontinent Independent System Operator, Inc., Docket No. ER21–920; PJM Interconnection, L.L.C., Docket No. ER21–972; Southwest Power Pool, Inc., ER21–1185; Southwest Power Pool, Inc., ER21–1193.

Attached to this Supplemental Notice is an agenda for the technical conference, which includes the final conference program and speakers. The conference will be open for the public to attend. Registration for the conference is not required, however members of the public may preregister online at: *https://ferc.webex.com/ferc/onstage/g.php?MTID=e2b36f2a0411532188b8cd973144668ff.* Anyone who registers by Monday, February 22, 2021 will be given instructions on how to access the event. Information on the technical conference will also be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts of the conference will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

For more information about this technical conference, please contact: Michael Hill (Technical Information), Office of Energy Policy and Innovation, (202) 502–8703, *Michael.Hill@ferc.gov*; Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004 *Sarah.Mckinley@ferc.gov.*

Dated: February 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04261 Filed 3–1–21; 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 rate filings:

Docket Numbers: ER16–2643–003; ER18–276 001.

Applicants: Panda Stonewall LLC, Hummel Station LLC.

Description: Triennial Market Power Analysis for Northeast Region of Panda MBR Sellers, et al.

Filed Date: 02/24/2021.

Accession Number: 20210224–5086.

Comment Date: 5 p.m. ET 4/26/21.

Docket Numbers: ER19–2273–003.

Applicants: Southwest Power Pool, Inc.

Description: Compliance Filing in Response to Order issued to be effective 1/1/2020.

Filed Date: 02/24/2021.

Accession Number: 20210224–5075.

Comment Date: 5 p.m. ET 3/17/21.

Docket Numbers: ER20–2379–001.

Applicants: Sugar Creek Wind One LLC.

Description: Notice of Non-Material Change in Status of Sugar Creek Wind One LLC.

Filed Date: 02/24/2021.

Accession Number: 20210224–5089.

Comment Date: 5 p.m. ET 3/17/21.

Docket Numbers: ER21–911–000.

Applicants: Montana-Dakota Utilities Co.

Description: Montana-Dakota Utilities Co. submits tariff filing per: Supplement to Updated Seller Category and Market Power Analysis to be effective N/A.

Filed Date: 02/24/2021.

Accession Number: 20210224–5115.

Comment Date: 5 p.m. ET 3/17/21.

Docket Numbers: ER21–1196–000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits the Lott FA re: ILDSA SA No. 1336 to be effective 4/26/2021.

Filed Date: 02/24/2021.

Accession Number: 20210224–5074.

Comment Date: 5 p.m. ET 3/17/21.

Docket Numbers: ER21–1197–000.

Applicants: All Choice Energy MidAmerica LLC.

Description: All Choice Energy MidAmerica LLC submits tariff filing per 35.12: Market-Based Rate Tariff Application to be effective 2/25/2021.

Filed Date: 02/24/2021.

Accession Number: 20210224–5096.

Comment Date: 5 p.m. ET 3/17/21.

Docket Numbers: ER21–1198–000.

Applicants: Pay Less Energy LLC.

Description: Pay Less Energy LLC submits tariff filing per 35.12: Market-Based Rate Tariff Application to be effective 2/25/2021.

Filed Date: 02/24/2021.

Accession Number: 20210224–5099.

Comment Date: 5 p.m. ET 3/17/21.

Docket Numbers: ER21–1199–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Amendment to ISA/CSA, Service Agreement Nos. 5604 and 5614; Queue No. AC1–164 to be effective 2/24/2020.

Filed Date: 02/24/2021.

Accession Number: 20210224–5104.

Comment Date: 5 p.m. ET 3/17/21.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM21–6–000.

Applicants: Indiana Municipal Power Agency.

Description: Application of Indiana Municipal Power Agency to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 02/24/2021.

Accession Number: 20210224–5102.

Comment Date: 5 p.m. ET 3/24/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: February 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04262 Filed 3–1–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5307–004]

Green Mountain Power Corporation, Hydro Power, LLC; Notice of Transfer of Exemption

1. On February 1, 2021, Green Mountain Power Corporation, exemptee for the Woodsville Hydroelectric Project No. 5307, filed a letter notifying the Commission that the project was transferred from Green Mountain Power Corporation to Hydro Power, LLC. The exemption from licensing was originally issued on February 5, 1982.[1] The project is located on the Ammonoosuc River, Grafton County, New Hampshire. The transfer of an exemption does not require Commission approval.

2. Hydro Power, LLC is now the exemptee of the Woodsville Hydroelectric Project No. 5307. All correspondence must be forwarded to: Mr. Brandon L. Boudreau, 87 Factory Street, St. Johnsbury, VT 05819, Email: *Brandon@FairBanksMill.com.*

Dated: February 24, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04259 Filed 3–1–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA 01–2021–0006; FRL–10018–25–Region 1]

Proposed CERCLA Administrative Cost Recovery Settlement: Jones and Lamson Site, Springfield, Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comments.

SUMMARY: Notice is hereby given of a proposed administrative cost settlement for recovery of response costs concerning the Jones and Lamson Site, located in Springfield, Windsor County, Vermont, with the Settling Party, Textron Inc. The proposed settlement requires the Settling Party to pay EPA $662,500 plus interest to settle EPA's claim for recovery of past response costs, which amount to approximately $830,000. In exchange, EPA will provide the Settling Party with a covenant not to sue for past costs. The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice. For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlement for recovery of response costs. The Agency will consider all comments received and may modify or withdraw its consent to this cost recovery settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Environmental Protection Agency—Region I, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

DATES: Comments must be submitted by April 1, 2021.

ADDRESSES: Comments should be addressed to Joy Sun, Senior Enforcement Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (04–2), Boston, MA 02109–3912, (617) 918–1018, *sun.joy@epa.gov,* and should reference the Jones and Lamson Site, U.S. EPA Docket No: CERCLA 01–2021–0006.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Stacy Greendlinger, Superfund and Emergency Management Division, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100 (02–2), Boston, MA 02109–3912, telephone number: (617) 918–1403, email address: *greendlinger.stacy@epa.gov.* Direct technical questions to Stacy Greendlinger and legal questions to Joy Sun, Office of Regional Counsel, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100 (04–2), Boston, MA 02109–3912, telephone number: (617) 918–1018, email address: *sun.joy@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposed administrative settlement for recovery of past response costs concerning the Jones and Lamson Site, located in Springfield, Windsor County, Vermont, is made in accordance with Section 122(h)(l) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA covenants not to sue or take administrative action against the Settling Party, Textron Inc., pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for Past Response Costs. In exchange, the Settling Party agrees to pay EPA $662,500, plus interest on that amount calculated from the Effective Date through the date of payment. Payment of such amount shall be due within 30 days after the Effective Date. For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlement for recovery of response costs. The Effective Date of the Agreement is the date upon which EPA notifies Textron Inc. that the public comment period has closed and that such comments, if any, do not require

[1] *New England Hydro, Inc., and Woodsville Fire District,* 18 FERC 62,158 (1982). On June 27, 2017, the project was transferred to *Green Mountain Power Corporation.*

that EPA modify or withdraw from the Agreement.

Bryan Olson,

Director, Superfund and Emergency Management Division.

[FR Doc. 2021–04247 Filed 3–1–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10020–92–OAR]

Production of Confidential Business Information in Pending Enforcement Litigation; Transfer of Information Claimed as Confidential Business Information to the United States Department of Justice and Parties to Certain Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (''EPA'') is providing notice of disclosure relating to the criminal prosecution styled *United States* v. *Emanuele Palma,* Case No. 2:19–cr–20626–NGE–DRG (E.D. Mich.) (the ''Palma Prosecution''). In response to a court order in the Palma Prosecution, EPA is disclosing documents to the United States Department of Justice (''DOJ'') for production in the litigation which may contain information submitted to EPA by vehicle and engine manufacturers that is claimed to be, or has been determined to be, potential confidential business information (collectively ''CBI''). The use of the documents and any potential CBI is limited to the Palma Prosecution and its distribution is restricted by the terms of a court issued protective order.

DATES: Access by DOJ and/or the parties to the Palma Prosecution to material, including CBI, discussed in this document, will begin on March 15, 2021, and is expected to continue during the Palma Prosecution.

FOR FURTHER INFORMATION CONTACT: Sara Zaremski, Associate Division Director, Compliance Division, Office of Transportation and Air Quality at *ComplianceInfo@epa.gov* or (734) 214–4362.

SUPPLEMENTARY INFORMATION: On September 18, 2019, the United States indicted Defendant Emanuel Palma on thirteen counts, including violations of the Clean Air Act under 42 U.S.C. 7413(c)(2)(A). On November 17, 2020, the United States District Court for the Eastern District of Michigan ordered the prosecution team to obtain and produce to the defendant certain materials in the possession, custody or control of the Environmental Protection Agency, Office of Transportation and Air Quality and Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Air Enforcement Division (hereinafter, collectively ''EPA''). *See* Opinion and Order Granting Defendant's Motion for Discovery, *United States* v. *Emanuele Palma,* Case No. 2:19–cr–20626–NGE–DRG, dated November 17, 2020 (ECF 58) (hereinafter ''the Discovery Order''). This notice is being provided, pursuant to 40 CFR 2.209(d), to inform potentially affected businesses that EPA intends to transmit certain documents, which may contain information submitted by vehicle and engine manufacturers that is claimed to be, or has been determined to be, potential confidential business information (collectively ''CBI''), to DOJ for production to the defendant in the criminal prosecution. The documents include EPA communications about, with, and information provided by vehicle and engine manufacturers in connection with the certification of light-duty diesel motor vehicle engines and related compliance matters, some of which may include CBI. The information may also include certification and compliance materials for other manufacturers of mobile source vehicles, engines and equipment, some of which may contain CBI.

The federal district court in the Palma Prosecution has issued a protective order, *see* Palma Prosecution, ECF 20, dated December 23, 2019, (hereinafter, the ''Protective Order''), that governs the treatment of information, including CBI, that is designated as ''Protected Information'' pursuant to the Protective Order. The Protective Order provides for limited disclosure and use of CBI and for the return or destruction of CBI at the conclusion of the litigation. In accordance with 40 CFR 2.209(c)–(d), the EPA must disclose such information to DOJ for production in the litigation to the extent required to comply with the obligations of the United States in the Palma Prosecution.

Sarah Dunham,

Director, Office of Transportation and Air Quality.

[FR Doc. 2021–04271 Filed 3–1–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than March 17, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The John C. Burgeson Residuary Trust fbo Lauren Burgeson, the John C. Burgeson Residuary Trust fbo J. Christopher Burgeson, Lauren L. Burgeson, and J. Christopher Burgeson, as trustees of the trusts, all of Des Moines, Iowa; Larry R. Cobb, Waukee, Iowa; Sonia S. Nicholson, Altoona, Iowa; and Gary W. Thies, Mapleton, Iowa, all as trustees of the aforementioned trusts;* as a group acting in concert, to acquire voting shares of Iowa State Bank Holding Company, and thereby indirectly acquire voting shares of Iowa State Bank, both of Des Moines, Iowa.

Board of Governors of the Federal Reserve System, February 25, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–04301 Filed 3–1–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than April 1, 2021.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *National Capital Bancorp, Inc., Washington, DC;* to become a bank holding company by acquiring The National Capital Bank of Washington, Washington, DC.

Board of Governors of the Federal Reserve System, February 25, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–04302 Filed 3–1–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Improving Rural Health Through Telehealth-Guided Provider-to-Provider Communication

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Improving Rural Health Through Telehealth-Guided Provider-to-Provider Communication,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before April 1, 2021.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Improving Rural Health Through Telehealth-Guided Provider-to-Provider Communication.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Improving Rural Health Through Telehealth-Guided Provider-to-Provider Communication,* including those that describe adverse events. Telehealth for this review of provider-to-provider communication is defined as any telecommunications facilitated interaction among, or support for, healthcare professionals designed to improve access, quality of care, or health outcomes for rural patients and populations. This includes a wide range of clinical applications such as remote ICU management; consultations for inpatient and outpatient care; and remote rounds or group education and case review (*e.g.,* Project ECHO, etc.). The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/rural-telehealth/protocol.*

This is to notify the public that the EPC Program would find the following information on *Improving Rural Health Through Telehealth-Guided Provider-to-Provider Communication* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered

confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQs)

KQ 1. What is the effectiveness of provider-to-provider telehealth for rural patients?

a. What is the impact of provider-to-provider telehealth on *rural patient and population* outcomes?

b. What is the impact of provider-to-provider telehealth on *healthcare providers?*

c. What is the impact of provider-to-provider telehealth on *private and public (ex. CMS, TriCare, VA, etc.) payers?*

d. What adverse events or unintended consequences are associated with provider-to-provider telehealth for rural patients?

e. What are the methodological weaknesses of the identified effectiveness studies of provider-to-provider telehealth for rural patients and what improvements in study design (*e.g.,* focus on relevant comparisons and outcomes) might increase the impact of future research?

KQ 2. What is the effectiveness of implementation strategies for provider-to-provider telehealth in rural areas?

a. What is the uptake of different types of provider-to-provider telehealth in rural areas?

○ Who are the current patients, providers, and payers engaged in provider-to-provider telehealth in rural areas?

○ What factors affect whether provider-to-provider telehealth in rural areas can be sustained?

b. Which barriers and facilitators impact adoption and implementation of provider-to-provider telehealth in rural areas?

c. Which strategies are effective in sustaining provider-to-provider telehealth in rural areas?

d. What are the methodological weaknesses of the identified studies of implementation and sustainability of provider-to-provider telehealth in rural areas and what improvements in study design (*e.g.,* focus on relevant comparisons and outcomes) might increase the impact of future research?

Populations, Interventions, Comparators, Outcomes, Settings

- *Population(s)*

○ Rural individual patients, patient families/care partners, and patient populations.

○ Healthcare providers (individuals and organizations) who provide health care services to rural patients or populations.

- Providers include any profession or occupation providing formal, paid services.
- Family or informal care partners are not considered providers.

○ Payers who pay for healthcare services for rural patients or populations.

- *Interventions*

○ Provider-to-provider telehealth defined as: Any telecommunications facilitated interaction among, or support for, healthcare professionals designed to improve access, quality of care, or health outcomes for rural patients and populations.

- *Comparators*

○ *KQ1:* Other telehealth facilitated care (not provider-to-provider), usual (in-person) provider-to-provider supports, no interaction or no care.

○ *KQ2:* Different strategies for dissemination, implementation, or spread; no strategies; time periods prior to implementation.

- *Outcomes*

○ *KQ1:* Clinical outcomes for the identified conditions (patient-reported outcomes, mortality, morbidity, such as function, illness recovery, infection); Economic outcomes such as return on investment, cost, volume of visits, and resource use, including length of stay and readmissions; Intermediate Outcomes; Patient satisfaction, behavior (such as care-seeking and compliance), and decisions such as completion of treatment, or satisfaction with less travel to access healthcare; Provider satisfaction, behavior, and decisions such as choice of treatment or antibiotic stewardship; Access measures and indicators including but not limited to time to diagnosis or time to treatment.

○ *KQ2:* Indicators and measures of uptake (*e.g.,* rates of use, timing to implementation) and characteristics of users; categories and descriptors of barriers and facilitators; categories and descriptors of strategies.

- *Settings*

○ Outpatient (primary care and specialty care), inpatient, prehospital and emergency care, post-acute and long-term care.

○ Civilian, Veterans Administration, or military.

○ Health care and non-healthcare settings where health services are delivered including in the home.

○ U.S. relevant settings [Note that studies from countries with significantly different healthcare systems and fewer resources (*e.g.,* low-income countries) are excluded.]

Dated: February 24, 2021.

Marquita Cullom,

Associate Director.

[FR Doc. 2021–04187 Filed 3–1–21; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10175]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human 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 April 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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*.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Certification Statement for Electronic File Interchange Organizations (EFIOs) that submit National Provider Identifier (NPI) data to the National Plan and Provider Enumeration System (NPPES); *Use:* the EFI process allows organizations to submit NPI application information on large numbers of providers in a single file. Once it has obtained and formatted the necessary provider data, the EFIO can electronically submit the file to NPPES for processing. As each file can contain up to approximately 25,000 records, or provider applications, the EFI process greatly reduces the paperwork and overall administrative burden associated with enumerating providers. It is essential to collect this information from the EFIO to ensure that the EFIO understands its legal responsibilities as an EFIO and attests that it has the authority to act on behalf of the providers for whom it is submitting data. In short, the certification statement, which must be signed by an authorized official of the EFIO, serves as a safeguard against EFIOs attempting to obtain NPIs for illicit or inappropriate purposes. *Form Number:* CMS–10175 (OMB control number 0938–0984); *Frequency:* Once, Annually; *Affected Public:* Private Sector, State, Business, and Not-for Profits; *Number of Respondents:* 32; *Number of Responses:* 32; *Total Annual Hours:* 8. (For questions regarding this collection contact DaVona Boyd at 410–786–7483.)

Dated: February 25, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–04274 Filed 3–1–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10054 and CMS–10632]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human 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 May 3, 2021.

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 *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

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**).

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:* New Technology Services for Ambulatory Payment Classifications under the Outpatient Prospective Payment System; *Use:* Section 1833(t)(6) of the Social Security Act (the Act) states, ''The Secretary shall provide for an additional payment under this paragraph for any of the following that are provided as part of a covered OPD service (or group of services).'' In accordance with the Act, CMS needs to keep pace with emerging new technologies and make them accessible to Medicare beneficiaries in a timely manner. It is necessary that we continue to collect appropriate information from interested parties such as hospitals, medical device manufacturers, pharmaceutical companies and others that bring to our attention specific services that they wish us to evaluate for New Technology Ambulatory Payment Classifications (APC) payment.

The information that we seek to continue to collect is necessary to determine whether certain new services are eligible for payment in New Technology APCs, to determine appropriate coding and to set an appropriate payment rate for the new technology service. The intent of these provisions is to ensure timely beneficiary access to new and appropriate technologies.

Both the New Technology APC provision and the transitional pass-through provisions provide ways for ensuring appropriate payment for new technologies for which the use and costs are not adequately represented in the base year claims data on which the outpatient PPS is constructed. Although individual drugs and biologicals and categories of medical devices will receive transitional pass-through payments for 2 to 3 years from the date payment is initiated for the specific item or category, the underlying statutory provision is permanent and provides an on-going mechanism for reflecting the introduction of new items into the payment structure in a timely manner. New Technology APCs are designed to allow appropriate payment for new technology services that are not covered by the transitional pass-through provisions. *Form Number:* CMS–10054 (OMB control number: 0938–0272); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 160. (For policy questions regarding this collection contact Allison Bramlett at 410–786–6556.)

2. *Type of Information Collection Request:* Reinstatement with change; *Title of Information Collection:* Evaluating Coverage to Care in Communities; *Use:* The purpose of this study is to extend our understanding from RAND Corporation's prior study of how C2C materials are used. This will be accomplished by assessing what materials best serve partners in their efforts to activate, engage, and empower consumers and how consumers engage with or respond to C2C materials. These data collection efforts will also serve the goals of informing future consumer messaging and creating a long-term feedback loop for maintaining a relevant, successful, and engaging C2C initiative. Initial survey results will be available in early 2022, which may help to fine-tune the strategy for the 2022 relaunch of C2C and will influence strategies and techniques going forward. Further, this study opens the door for a feedback loop that may include future consumer testing to adjust and improve C2C outreach strategies to meet the changing needs of various targeted populations.

The C2C Logic Model serves as the basis of this package. The goal of C2C is to improve the health of all populations, especially vulnerable and newly insured populations, by helping consumers understand their health insurance coverage and connecting individuals to primary care and preventive services. The urgency of achieving this goal is underscored by the COVID–19 pandemic, which has discouraged patients from seeking preventive care and hampered patients from properly managing chronic conditions at a time when preserving emergency room and hospital bed capacity is paramount.

There are three main paths of information dissemination covered by the C2C Logic Model (see Exhibit 1): (a) A direct path to the consumer, (b) a path to the consumer through a partner, and (c) a role for performance measurement in improving performance (*i.e.,* desired effect and how C2C can improve). The partner and consumer surveys in the present evaluation build upon RAND's earlier study by adapting their questions to the C2C Logic Model and using similar survey methodologies in three to four targeted geographic areas known to have received a high volume of C2C materials and messages. These research questions and sub-questions correspond to the short-term and intermediate-term outcomes on the C2C Logic Model. Thus, the foregoing is a reformulation of questions answered by RAND and a consideration of additional questions. *Form Number:* CMS–10632 (OMB control number: 0938–1342); *Frequency:* Yearly; *Affected Public:* Individuals and Households, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 460; *Total Annual Responses:* 460; *Total Annual Hours:* 152. (For policy questions regarding this collection contact Ashley Peddicord-Auston at 410–786–0757.)

Dated: February 25, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–04303 Filed 3–1–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–372(S)]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice; withdrawal.

On Thursday, February 25, 2021, the Centers for Medicare & Medicaid Services (CMS) published a 60-day notice entitled, ''Agency Information Collection Activities: Proposed Collection; Comment Request.'' That notice invited public comments on the following information collection request: *Title:* Annual Report on Home and Community Based Services Waivers

and Supporting Regulations; *Form Number:* CMS–372(S); and *OMB Control Number:* 0938–0272. Through the publication of this document we are withdrawing that notice (FR document: 2021–03916) in its entirety. While the notice published in error, it will be resubmitted for publication and public comment when ready.

Dated: February 25, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–04296 Filed 3–1–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

DATES: The meeting will be held on Tuesday, March 23rd, 2021, from 11:00 a.m. until 4:30 p.m., and Wednesday, March 24, 2021, from 11:00 a.m. until 4:30 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted on the SACHRP website when this information becomes available.

ADDRESSES: This meeting will be held via webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted one week prior to the meeting at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification or coordination.

The SACHRP meeting will open to the public at 11:00 a.m., on Tuesday, March 23, 2021, followed by opening remarks from Dr. Jerry Menikoff, Director of OHRP and Dr. Douglas Diekema, SACHRP Chair. The meeting will begin with presentation of recommendations on Justice as an Ethical Concept in 45 CFR 46, followed by an expert panel discussion of draft recommendations on Mandatory Exploratory Biopsies in Research. The day will conclude with discussion of a new SACHRP topic, IRB Authority to Restrict Use of Data in Research. March 24th will include presentation of Interactions between Sponsors, Clinical Trial Sites, and Research Subjects, and lastly, Consideration of Risks to Bystanders in Research. Other topics may be added; for the full and updated meeting agenda, see *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

The public will have an opportunity to send comments to SACHRP during the meeting's public comment session or to submit written public comments in advance. Persons who wish to provide public comments should review instructions at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html* and respond by midnight Wednesday, March 18th, 2021, ET. Individuals submitting written statements as public comment should submit their comments to SACHRP at *SACHRP@hhs.gov.* Comments are limited to three minutes each.

Time will be allotted for public comment on both days. Note that public comment must be relevant to topics currently being addressed by SACHRP.

Dated: February 22, 2021.

Julia G. Gorey,

Executive Director, SACHRP, Office for Human Research Protections.

[FR Doc. 2021–04244 Filed 3–1–21; 8:45 am]

BILLING CODE 4150–36–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; NIDA–L Conflict SEP.

Date: March 25, 2021

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Preethy Nayar, Ph.D. Scientific Review Officer Scientific Review Branch National Institute on Drug Abuse, NIH 301 North Stonestreet Avenue Bethesda, MD 20892, 301–443–4577, *nayarp2@csr.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Implementing the HIV Service Cascade for Justice-Involved Populations (U01—Clinical Trial Optional).

Date: March 30, 2021.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D.; Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue Bethesda, MD 20892, (301) 496–9350 *sheila.pirooznia@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 24, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04299 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Martin Delaney Collaboratories for HIV Cure Research (UM1 Clinical Trial Not Allowed); Martin Delaney Collaboratory for Pediatric HIV Cure Research (UM1 Clinical Trial Not Allowed)

Date: March 30–31, 2021.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: J. Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11A Rockville, MD 20852, 240–669–5045, *sundstromj@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 24, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04297 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required)

Date: April 22–23, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health 5601 Fishers Lane, Room 3G13B Rockville, MD 20852 (240) 669–5048 *yong.gao@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 24, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04300 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Biology and Biophysics of Neural Stimulations and Recording Technologies.

Date: March 23, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, *mirela.milescu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 24, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04298 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Library of

Medicine Board of Scientific Counselors.

The meeting will be open to the public as indicated below. 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 as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Board of Scientific Counselors.

Date: April 22, 2021.

Open: April 22, 2021, 11:00 a.m. to 12:30 p.m.

Agenda: Program Discussion and Senior Investigator Report.

Place: Virtual Meeting.

Closed: April 22, 2021, 12:30 p.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Open: April 22, 2021, 12:45 p.m. to 3:45 p.m.

Agenda: Senior Investigator Report.

Closed: April 22, 2021, 3:45 p.m. to 4:15 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Contact Person: Valerie Florance, Ph.D., Acting Scientific Director, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892, 301–496–6221, *floranc@mail.nih.gov.*

Any member of the public may submit written comments no later than 15 days after the meeting. 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.

Open sessions of this meeting will be broadcast to the public, and available for viewing at *https://videocast.nih.gov* on April 22, 2021. Please direct any questions to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 24, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04225 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cognitive and Neuropathological signatures of Alzheimer's Disease, Brain Injury and Aging.

Date: March 23, 2021.

Time: 9:30 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 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846 Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Fogarty Global Brain Disorders.

Date: March 23–24, 2021.

Time: 9:30 a.m. to 7:00 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: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846 Bethesda, MD 20892 301–435–1259 *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflict: Child Psychopathology, Developmental Disabilities, and Mechanisms of Anxiety and Depression.

Date: March 25, 2021.

Time: 1:00 p.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 (Virtual Meeting).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848 Bethesda, MD 20892, (301) 402–4411 *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Antiviral Therapeutics.

Date: March 29–30, 2021.

Time: 9:00 a.m. to 1:00 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: Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20894 301–435–4057 *bidyottam.mittra@nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member conflict: Dermatology Development and Disease.

Date: March 29, 2021.

Time: 12:30 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: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814 Bethesda, MD 20892, (301) 496–8551 *ingrahamrh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04229 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be held as a virtual meeting and is open to the public.

Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee (CTAC), Ad hoc Translational Research Strategy Subcommittee.

Date: March 29, 2021.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: Group Discussion of Opportunities and Gaps in Translational Research.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Peter Ujhazy, MD, Ph.D., Deputy Associate Director, Translational Research Program, Division of Cancer Treatment and Diagnosis, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W106, Rockville, MD 20850, 240–276–5681, *ujhazyp@mail.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.

Information is also available on the Institute's/Center's home page: *https://deainfo.nci.nih.gov/advisory/ctac/subcommittees/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 24, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04228 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with virtual attendance.

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 materials, 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: Board of Regents of the National Library of Medicine.

Date: May 11–12, 2021.

Open: May 11, 2021, 10:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Place: Virtual Meeting.

Closed: May 11, 2021, 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Open: May 12, 2021, 10:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.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.

Information is also available on the Institute's/Center's home page: www.nlm.nih.gov/od/bor/bor.html where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for viewing at *http://videocast.nih.gov* on May 11–12, 2021.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: February 24, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04231 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of K99/R00 MOSAIC Applications.

Date: March 26, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive Bethesda, MD 20892 (Video Meeting).

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849 *dunbarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 24, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04224 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Artificial Intelligence, Technology, and Aging.

Date: March 12, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Kimberly Firth, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 24, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04227 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Literature Selection Technical Review Committee. The meeting is devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine and will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 24–25, 2021.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: Virtual Meeting.

Contact Person: Dianne Babski, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301–827–4729, *babskid@mail.nih.gov*.

Any member of the public may submit written comments no later than 15 days after the meeting. 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.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: February 24, 2021.

Ronald J. Livingston, Jr.,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2021–04230 Filed 3–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–11]

30-Day Notice of Proposed Information Collection: Rental Assistance Demonstration (RAD) Choice Mobility and Long-Term Affordability Evaluation OMB Control No. 2528–New

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* April 1, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 9, 2020 at 85 FR 35328.

A. Overview of Information Collection

Title of Information Collection: Rental Assistance Demonstration (RAD) Choice Mobility and Long-Term Affordability Evaluation.

OMB Approval Number: 2528-New.

Type of Request: New collection.

Form Number: NA

Description of the need for the information and proposed use:

The Office of Policy Development and Research (PD&R), at the U.S. Department of Housing and Urban Development (HUD), is proposing the collection of information for the Rental Assistance Demonstration (RAD) Choice Mobility and Long-Term Affordability Evaluation.

RAD was established under the Consolidated and Further Continuing Appropriations Act of 2012 to preserve affordable housing units over the long term by enabling public housing authorities (PHAs) to apply to HUD to convert at-risk public housing properties to two different forms of project-based Section 8 Housing Assistance Payments contracts—project-based voucher (PBV) or project-based rental assistance (PBRA). Doing so gives PHAs more flexibility to access private and public funding sources to meet with short-term capital needs, reduce their reliance on limited appropriations, and stabilize their financial and physical condition. Choice mobility, an

additional feature of RAD, allows residents of RAD properties to request a Housing Choice Voucher that they can use to move to a housing unit in the private market.

Congress requested an evaluation of RAD to assess the impact of the demonstration on the preservation and improvement of public housing, the amount of private sector leveraging, and the effect on tenants. HUD contracted a two-phase evaluation to address these research areas. The Phase I results were published in 2016 and the Phase II results in 2019. The OMB Approval Number for that evaluation was 2528–0304 and expired on January 31st, 2020. The Fiscal Year 2018 Appropriations Act provided funds to conduct a follow-up evaluation of the RAD program, including its implementation and outcomes, the choice mobility option, the impact on tenants and related protections, and the long-term preservation of housing affordability.

This **Federal Register** Notice provides an opportunity to comment on the information collection for this new phase of the RAD evaluation titled RAD Choice Mobility and Long-Term Affordability Evaluation. The current information collection is designed to support four studies included in the evaluation. One is the study of the implementation of the RAD choice mobility option and its effects on property outcomes, tenant outcomes, and the voucher program. The second study is the impact of RAD on the long-term preservation and financial viability of converted affordable housing properties. The third is the adequacy of asset management for PBV and PBRA conversions. The fourth study will examine the organizational and operational changes at PHAs that participated in RAD. For the first three studies, the evaluation includes web-based survey of all RAD PHAs, RAD property owners/operators, and former RAD residents who have exercised the choice mobility option; and a sample survey of RAD residents who have not elected the choice mobility option. For the fourth study, we plan to conduct qualitative interviews with senior staff at 25 RAD PHAs.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden ?hour per response	Annual burden hours	Hourly cost per response	Annual cost
Census of RAD PHA	400	1	400	0.75	300.00	$34.46	$10,338.00
Survey of RAD non-PHA Property Owners	228	1	228	0.33	75.24	34.46	2,592.77
Survey of choice mobility residents	708	1	708	0.33	233.64	28.62	6,686.78
Survey of non-choice mobility residents	231	1	231	0.33	76.23	28.62	2,181.70
Interview of PHA staff on organizational changes	250	1	250	1.5	375.00	34.46	12,922.50
Total	1,817	N/A	1,817	N/A	1,060.11	N/A	34,721.75

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

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

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–04253 Filed 3–1–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2021–0008; FXIA16710900000–FF09A10000–212]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Nineteenth Regular Meeting: Species Proposals for Consideration and Request for Information and Recommendations on Resolutions, Decisions, and Agenda Items for Consideration

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: To implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention), the Parties to the Convention meet periodically to review what species in international trade should be regulated and other aspects of CITES implementation. The nineteenth regular meeting of the Conference of the Parties (CoP19) is tentatively scheduled to be held in Costa Rica, March 3–14, 2022. With this notice we are soliciting recommendations for amending Appendices I and II of CITES at CoP19 as well as recommendations for resolutions, decisions, and agenda items for discussion at CoP19. We invite you to provide us with information and recommendations on animal and plant species for which the United States should consider submitting proposals to amend Appendices I and II of CITES at CoP19. Such proposals may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendices. We also invite you to provide us with information and recommendations on resolutions, decisions, and agenda items that the United States might consider submitting for discussion at CoP19. Finally, with this notice, we also describe the U.S. approach to preparations for CoP19.

DATES: We will consider all information and comments we receive on or before May 3, 2021.

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

(1) *Electronically:* Using the Federal eRulemaking Portal: *http://www.regulations.gov,* search for FWS–HQ–IA–2021–0008, which is the docket number for this notice.

(2) *U.S. mail:* Public Comments Processing, Attn: FWS–HQ–IA–2021–0008; U.S. Fish and Wildlife Service Headquarters, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept email or faxes. Comments and materials we receive, as well as supporting documentation, will be available for public inspection on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information pertaining to species proposals, contact Rosemarie Gnam, Chief, Division of Scientific Authority, 703–358–1708 (phone); 703–358–2276 (fax); or *scientificauthority@fws.gov* (email). For information pertaining to resolutions, decisions, and agenda items, contact Pamela Scruggs, Chief, Division of Management Authority, at 703–358–2493 (phone); or *managementauthority@fws.gov* (email). If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty aimed at ensuring that international trade in listed animal and plant species does not threaten their survival. Species are included in the Appendices to CITES, which are available on the CITES Secretariat's website at *http://www.cites.org/eng/disc/species.php.*

Currently there are 183 Parties to CITES, 182 countries, including the United States, and one regional economic integration organization, the European Union. The Convention calls for regular meetings of the Conference of the Parties, and the Conference of the Parties has decided that these meetings should be held every 2–3 years. At the meetings, the Parties review the implementation of CITES, make decisions regarding the financing and function of the CITES Secretariat in Switzerland to enable it to carry out its functions, consider amendments to Appendices I and II, consider reports presented by the Secretariat, and adopt recommendations for the improved effectiveness of CITES. Any Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by all the Parties at the meeting.

This is our first in a series of **Federal Register** notices that, together with at least one public meeting (time and location to be announced), provide you with an opportunity to provide input into the development of the U.S. submissions to, and negotiating positions for, CoP19. We intend to announce tentative species proposals and tentative documents related to resolutions, decisions, and agenda items that the United States is considering submitting for CoP19, and solicit further information and comments on them, when we publish our next CoP19-related **Federal Register** notice. Our regulations guiding this public process can be found in title 50 of the Code of Federal Regulations (CFR) at § 23.87.

Announcement of the Nineteenth Meeting of the Conference of the Parties

We hereby notify all interested entities of the convening of CoP19, which is tentatively scheduled to be held in Costa Rica on March 3–14, 2022, at a location to be determined.

U.S. Approach for CoP19

What are the priorities for U.S. submissions to CoP19?

Priorities for U.S. submissions to CoP19 continue to be consistent with the overall objective of U.S. participation in the Convention: To maximize the effectiveness of the Convention in the conservation and sustainable use of species subject to international trade. With this in mind, we plan to consider the following factors in determining what issues to submit for inclusion in the agenda at CoP19:

(1) *Does the proposed action address a serious wildlife or plant trade issue that the United States is experiencing as a range country for species in trade?* Since our primary responsibility is the conservation of our domestic wildlife resources, we will give native species the highest priority. We will place particular emphasis on terrestrial and freshwater species with the majority of their range in the United States and its territories that are or may be traded in significant numbers; marine species that occur in U.S. waters or for which the United States is a major trader; and threatened and endangered species for which we and other Federal and State agencies already have statutory responsibility for protection and recovery. We also consider CITES listings as a proactive measure to monitor and manage trade in native species to preclude the need for the application of stricter measures, such as listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), or inclusion in CITES Appendix I.

(2) *Does the proposed action address a serious wildlife or plant trade issue for species not native to the United States?* As a major importer of wildlife, plants, and their products, the United States has taken responsibility, by working in close consultation with range countries, for addressing cases of potential over-exploitation of foreign species in the wild. In some cases, the United States may not be a range country or a significant trading country for a species, but we will work closely with other countries to conserve species being threatened by unsustainable exploitation for international trade. We will consider CITES listings for species not native to the United States if they will assist in addressing cases of known or potential over-exploitation of foreign species in the wild, and in preventing illegal, unregulated trade, especially if the United States is a major importer. These species will be prioritized based on the extent of trade and status of the species, and also the role the species play in the ecosystem, with emphasis on those species for which a CITES listing would provide the greatest conservation benefits to the species, associated species, and their habitats.

(3) *Does the proposed action provide additional conservation benefit for a species already covered by another international agreement?* The United States will consider the inclusion of such a species under CITES when it would enhance the conservation of the species by ensuring that international trade is effectively regulated and not detrimental to the survival of the species.

Request for Information and Recommendations for Amending Appendices I or II

Through this notice, we solicit information and recommendations that will help us identify species that the United States could propose for addition to, removal from, or reclassification in the CITES Appendices, or to identify issues warranting attention by the CITES specialists on zoological and botanical nomenclature. This request is not limited to species occurring in the United States. We encourage the submission of information on any species for possible inclusion in, transfer between, or removal from the Appendices, including if these species are subject to international trade that is, or may become, detrimental to the

survival of the species. We also encourage you to keep in mind the U.S. approach to CoP19, described above in this notice, when considering what proposals to amend the Appendices the United States should submit.

We ask that you submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of international as well as domestic trade in the species, especially trend information. You may also provide any other relevant information, and we appreciate receiving a list of references. Although we are not requesting complete proposals, they are always welcome.

The term ''species'' is defined in CITES as ''any species, subspecies, or geographically separate population thereof.'' Each species for which trade is controlled under CITES is included in one of three Appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES (text of the Convention is on the CITES Secretariat's website at *http://www.cites.org/eng/disc/text.php*). Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. Appendix II also includes species that must be subject to regulation in order that trade in other CITES-listed species may be brought under effective control. Such ''look alike'' inclusions usually are necessary because of the difficulty inspectors have at ports of entry or exit in distinguishing one species from other species. Because Appendix III includes species that have been included in the Appendix unilaterally by a Party, we are not seeking input on possible U.S. Appendix-III listings with this notice, and we will not consider or respond to comments received concerning Appendix-III listings.

CITES specifies that international trade in any readily recognizable parts or derivatives of animals included in Appendices I or II, or plants included in Appendix I, is subject to the same conditions that apply to trade in the whole organisms. With certain standard exclusions formally approved by the Parties, the same applies to the readily recognizable parts and derivatives of most plant species included in Appendix II. Parts and derivatives often not included (*i.e.,* not regulated) for Appendix-II plants are: seeds, spores, pollen (including pollinia), and seedlings or tissue cultures obtained in vitro and transported in sterile containers. You may refer to the CITES Appendices on the Secretariat's website at *http://www.cites.org/eng/app/index.php* for further exceptions and limitations.

In 1994, the CITES Parties adopted criteria for inclusion of species in Appendices I and II (in Resolution Conf. 9.24 (Rev. CoP17) *https://cites.org/sites/default/files/document/E-Res-09-24-R17.pdf*). These criteria apply to all proposals to amend the CITES Appendices and are available from the CITES Secretariat's website at *http://www.cites.org/eng/res/index.php* or upon request from the Division of Scientific Authority at the address provided above in **ADDRESSES**. Resolution Conf. 9.24 (Rev. CoP17) also provides a format for proposals to amend the Appendices. This information is also available upon request from the Division of Scientific Authority or via mail (at the address provided above in **ADDRESSES**).

What information should be submitted?

In any recommendations you submit for possible proposals to amend the Appendices, please include as much of the following information as possible in your submission:

(1) Scientific name and common name;

(2) Population size estimates (including references if available);

(3) Population trend information;

(4) Threats to the species (other than trade);

(5) The level or trend of international trade (as specific as possible, but without a request for new searches of our records);

(6) The level or trend in total take from the wild (as specific as reasonable); and

(7) A short summary statement clearly presenting the rationale for inclusion in, or removal or transfer from, one of the Appendices, including which of the criteria in Resolution Conf. 9.24 (Rev. CoP17) are met.

If you wish to submit more complete proposals for us to consider, please consult Resolution Conf. 9.24 (Rev. CoP17) (*https://cites.org/sites/default/files/document/E-Res-09-24-R17.pdf*) for the format for proposals and a detailed explanation of each of the categories. Proposals to transfer a species from Appendix I to Appendix II, or to remove a species from Appendix II, must also be in accordance with the precautionary measures described in Annex 4 of Resolution Conf. 9.24 (Rev. CoP17).

What will we do with information we receive?

The information that you submit will help us decide if we should submit, or co-sponsor with one or more other Parties, a proposal to amend the CITES Appendices. However, there may be species that qualify for inclusion in the CITES Appendices for which we decide not to submit a proposal to CoP19. Our decision will be based on a number of factors, including the priorities we outlined above in the U.S. approach to CoP19. We will consult range countries for foreign species, and for species whose range the United States shares with other countries.

One important function of the CITES Scientific Authority of each Party country is monitoring the international trade in plant and animal species, and ongoing scientific assessments of the impact of that trade on species. For native U.S. species included in Appendices I and II, we monitor trade export permits authorized so that we can prevent over-utilization and restrict exports if necessary. We also work closely with the States to ensure that species are appropriately listed in the CITES Appendices. For these reasons, we actively seek information about U.S. and foreign species subject to international trade.

Request for Information and Recommendations on Resolutions, Decisions, and Agenda Items

Although we have not yet received formal notice of the provisional agenda for CoP19, we invite your input on possible agenda items that the United States could recommend for inclusion, or on possible resolutions and decisions of the Conference of the Parties that the United States could submit for consideration. Copies of the agenda and the results of the last meeting of the Conference of the Parties (CoP18), as well as copies of all Resolutions and Decisions of the Conference of the Parties currently in effect, are available on the CITES Secretariat's website (*http://www.cites.org/*) or from the Division of Management Authority at the address provided above in **ADDRESSES**.

Future Actions

As stated above, CoP19 is tentatively scheduled to be held in Costa Rica, in 2022. The United States must submit all proposals to amend Appendix I or II, and draft resolutions, decisions, or agenda items for discussion at CoP19, to the CITES Secretariat 150 days prior to

the start of the meeting (tentatively October 4, 2021). In order to meet this deadline and to prepare for CoP19, we plan to keep the public informed about the CoP through a series of additional **Federal Register** notices and website postings in advance of CoP19. We will announce the tentative species proposals and proposed resolutions, decisions, and agenda items that the United States is considering submitting for CoP19 and solicit further information and comments on them. We will post on our website an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP19. Finally, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at CoP19, and about how to obtain observer status from us. We will also publish an announcement of a public meeting tentatively to be held approximately 4 months prior to CoP19, which will provide an opportunity to receive public input on our positions regarding CoP19 issues. The procedures for developing U.S. documents and negotiating positions for a meeting of the Conference of the Parties to CITES are outlined in 50 CFR 23.87. As noted, we may modify or suspend the procedures outlined there if they would interfere with the timely or appropriate development of documents for submission to the CoP and of U.S. negotiating positions.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including your personal identifying information—may be made publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review; however, we cannot guarantee that we will be able to do so.

Author

The primary authors of this notice are Thomas Leuteritz, Division of Scientific Authority, and Anne St. John, Division of Management Authority, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Senior Advisor to the Secretary, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–04295 Filed 3–1–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20DJ73GY140.00; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Local & Indigenous Knowledge of Permafrost Dynamics Across the Yukon River Basin

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 3, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–xxxx in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Herman-Mercer by email at *nhmercer@usgs.gov* or by telephone at 303–236–5031.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: We will collect narrative information regarding knowledge and observations of permafrost dynamics in communities in the Yukon River Basin in Alaska. Narrative information will be collected via semi-structured interviews with active land users in specific communities as well as relevant city, tribal council, and village corporation staff. Questions will focus on observations of landscape change and infrastructure damage indicative of permafrost thaw. This information will allow for a greater understanding of permafrost dynamics in the region as well as the impacts thaw has on communities. This information will be used to inform future permafrost monitoring efforts in the region and provided to communities for adaptation planning.

Title of Collection: Local & Indigenous Knowledge of Permafrost Dynamics across the Yukon River Basin.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 150.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: 60 minutes.

Total Estimated Number of Annual Burden Hours: 150.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Jennifer Rapp,

Chief, Decision Support Branch.

[FR Doc. 2021–04226 Filed 3–1–21; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20RN00COM0011; OMB Control Number 1028–0048]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Did You Feel It? Earthquake Questionnaire

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0048 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact David Wald by email at *wald@usgs.gov,* or by telephone at 303–273–8441. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 18, 2020, 85 FR 58383. No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The U.S. Geological Survey is required to collect, evaluate, publish and distribute information concerning earthquakes. Respondents have an opportunity to voluntarily supply information concerning the effects of shaking from an earthquake—on themselves, buildings, other man-made structures, and ground effects such as faulting or landslides. Respondents' observations are interpreted in terms of numbers that measure the strength of shaking, and the resulting numbers are displayed on maps that are viewable from USGS earthquake websites. Observations are submitted via the Felt Report questionnaire accessed from the USGS Did You Feel It? Earthquake Questionnaire web pages, and may be submitted via computer or mobile phone. Respondents are asked to provide information on the location to which the report pertains. The locations may, at the respondent's option, be given imprecisely (city-name or postal Zip Code) or precisely (street address, geographic coordinates, or current location determined by the user's mobile phone). Low resolution maps of shaking based on both precise and imprecise observations are published for all earthquakes for which observations are submitted. For earthquakes felt by many respondents, the observations that are associated with more precise locations are used in the preparation of higher resolution maps of earthquake shaking.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We will release data collected on these forms only in formats that do not include proprietary information volunteered by respondents.

Title of Collection: Did You Feel It? Earthquake Questionnaire.

OMB Control Number: 1028–0048.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: General public.

Total Estimated Number of Annual Respondents: 200,000.

Total Estimated Number of Annual Responses: 300,000.

Estimated Completion Time per Response: 3 minutes on average.

Total Estimated Number of Annual Burden Hours: 15,000 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion, after each earthquake.

Total Estimated Annual Non-hour Burden Cost: $0.00.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Brian Shiro,

Associate Director, Geologic Hazards Science Center.

[FR Doc. 2021–04292 Filed 3–1–21; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of North Carolina

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Second Amended and Restated Tribal-State Compact between the Eastern Band of Cherokee Indians (Tribe) and the State of North Carolina (State).

DATES: The compact takes effect on March 2, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Compact expands the scope of allowable gaming to include sports wagering and horse race wagering; provides the Tribe will reimburse costs the State incurs to regulate gaming; provides that the Tribe will have the primary responsibility to administer and enforce regulatory requirements; provides the Tribe may operate up to three class III gaming facilities on tribal lands; provides geographic exclusivity for gaming west of Interstate 26; and extends the effective date of the Compact to August 12, 2045. The Compact is approved.

Darryl LaCounte,

Director, Bureau of Indian Affairs, Exercising the Delegated Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2021–04254 Filed 3–1–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031481; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Kansas State Historical Society has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Kansas State Historical Society. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Kansas State Historical Society at the address in this notice by April 1, 2021.

ADDRESSES: Robert J. Hoard, Kansas State Historical Society, 6425 SW 6th Avenue, Topeka, KS 66615–1099, telephone (785) 272–8681 Ext. 269, email *robert.hoard@ks.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Kansas State Historical Society, Topeka, KS. The human remains were removed from St. Francis, Cheyenne County, KS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Kansas State Historical Society professional staff in consultation with representatives of the Cheyenne and Arapaho Tribes, Oklahoma [previously listed as Cheyenne-Arapaho Tribes of Oklahoma]; Kaw Nation, Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; and The Osage Nation [previously listed as Osage Tribe] (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

On June 30, 2014, human remains representing, at minimum, one individual were removed from 114 South Scott Street, St. Francis, Cheyenne County, KS. The human remains were found in a home-made coffin located in a building that had recently been purchased by an individual. Cheyenne County Kansas Sheriff Cody Beeson was notified of the discovery, whereupon he, Undersheriff Rodriquez, KBI agent Mark Kendrick, Deputy Coroner Dr. Mary Beth Miller, and Melvin Coffer visited the site. Coffer suspected that the skeletal remains had been used in ceremonies performed by the Oddfellows. Sheriff Cody Beeson took possession of the human remains and contacted Robert J. Hoard, Kansas State Archeologist. At Hoard's request, on June 30, 2014, Sheriff Cody transferred the human remains to Hoard. They arrived at the Kansas State Historical Society on July 17, 2014. No known individual was identified. No associated funerary objects are present.

The human remains include the major parts of a human skeleton in fair condition, but evidence of weathering suggests the remains had been exposed to the open for an unknown period of time. Osteological analysis by Michael Finnegan, Ph.D., D–ABFA indicates the remains belong to a female, 35–40 years of age, and morphological attributes of the cranium and femur indicate Native American ancestry. Because of the weathering of the elements, it is believed that the human remains were

originally left to decompose outside, possibly on a scaffold, or were buried and subsequently eroded out of the burial site, or were excavated. Officials of the Kansas State Historical Society have determined that this individual belonged to one of the Tribal Nations that are historically known to have been in present-day Cheyenne County, Kansas.

Determinations Made by the Kansas State Historical Society

Officials of the Kansas State Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cheyenne and Arapaho Tribes, Oklahoma [previously listed as Cheyenne-Arapaho Tribes of Oklahoma].

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Robert J. Hoard, Kansas State Historical Society, 6425 SW 6th Avenue, Topeka, KS 66615–1099, telephone (785) 272–8681 Ext. 269, email *robert.hoard@ks.gov,* by April 1, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cheyenne and Arapaho Tribes, Oklahoma [previously listed as Cheyenne-Arapaho Tribes of Oklahoma] may proceed.

The Kansas State Historical Society is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: February 5, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–04256 Filed 3–1–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–31538; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before February 20, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by March 17, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 20, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

CALIFORNIA

Sacramento County

Jefferson, Thomas, School, 1619 N St., Sacramento, SG100006319

North Sacramento School, 670 Dixieanne Ave., Sacramento, SG100006320

Santa Clara County

Pomeroy Green, 1087–1151 Pomeroy Ave. and 3201–3289 Benton St., Santa Clara, SG100006330

GEORGIA

Effingham County

Springfield Historic District, Roughly bounded by Railroad and 2nd Aves., Laberta Cir., Early, Cedar, 3rd, and 4th Sts., Springfield, SG100006329

Fulton County

Methodist Cemetery, 100 Woodstock St., Roswell, SG100006327

Upson County

Silvertown Historic District, Approx. 1 mile north of downtown along GA 19, Thomaston, SG100006336

KANSAS

Douglas County

Zimmerman Steel Company (Lawrence, Kansas MPS), 701 E 19th St., Lawrence, MP100006322

Ellis County

Washington Grade School, (Public Schools of Kansas MPS), 305 Main St., Hays, MP100006323

McPherson County

Pearson, Anton, House and Studio, 505 South Main St., Lindsborg, SG100006324

Miami County

Miami County Mercantile Company, 121 South Pearl St., Paola, SG100006325

Sedgwick County

Garvey Center, 200–220–250–300 West Douglas Ave., Wichita, SG100006328

Shawnee County

Evergreen Court Apartments, 3311–3321 SW 10th Ave., Topeka, SG100006326

MAINE

Androscoggin County

Lincoln Street Fire Station, 188 Lincoln St., Lewiston, SG100006334

Franklin County

Phillips High School, 96 Main St., Phillips, SG100006335

MICHIGAN

Benzie County

Frostic, Gwen, Studio, 5140 River Rd., Benzonia Township, SG100006321

UTAH

Tooele County

Black Rock Site, 2.5 mi. west of jct. UT 202 and I 80, Lake Point vicinity, SG100006332

WASHINGTON

Chelan County

Brown's First Addition Historic District, 900 blk. of South Highland Dr., Wenatchee, SG100006343

Additional documentation has been received for the following resource:

UTAH

Cache County

Clarkston Tithing Granary (Additional Documentation) (Tithing Offices and Granaries of the Mormon Church TR), 80 West Center St., Clarkston, AD85000250

Nomination submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following

nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

INDIANA

Floyd County

U.S. Court House and Federal Office Building, 121 West Spring St., New Albany, SG100006338

Authority: Section 60.13 of 36 CFR part 60.

Dated: February 23, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–04249 Filed 3–1–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–637 and 731–TA–1471 (Final)]

Large Vertical Shaft Engines From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of large vertical shaft engines from China, provided for in subheadings 8407.90.10, 8407.90.90, and 8409.91.99 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.[2]

Background

The Commission instituted these investigations effective January 15, 2020, following receipt of petitions filed with the Commission and Commerce by the Coalition of American Vertical Engine Producers (Kohler Co., Kohler, Wisconsin and Briggs & Stratton Corporation, Wauwatosa, Wisconsin). The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of large vertical shaft engines from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 18, 2020 (85 FR 58384). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on January 5, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on February 24, 2021. The views of the Commission are contained in USITC Publication 5162 (February 2021), entitled *Large Vertical Shaft Engines from China: Investigation Nos. 701–TA–637 and 731–TA–1471 (Final).*

By order of the Commission.

Issued: February 24, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–04201 Filed 3–1–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1252]

Certain Robotic Floor Cleaning Devices and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 28, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of iRobot Corporation of Bedford, Massachusetts. The complaint 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 robotic floor cleaning devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,884,423 (''the '423 patent''); U.S. Patent No. 10,813,517 (''the '517 patent''); U.S. Patent No. 10,835,096 (''the '096 patent''); U.S. Patent No. 7,571,511 (''the '511 patent''); and U.S. Patent No. 10,296,007 (''the '007 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, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* 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.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 25, 2021, *Ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4, 6–9, 12–15, 18, 20–23, 25, and 26 of the '423 patent; claims 1, 3, 4, 9, and 10 of the '517 patent; claims 1, 3–6, 8–10, 12–14, 16–19, 21–23, 25 and 26 of the '096 patent; claims 1, 8–12, 14, 16, 18, 19, 22–25, 32–34, 36, 37, 55, 56, and 62 of the '511 patent; and claims 1, 5,

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on large vertical shaft engines from China.

6, 10, 12, and 13 of the '007 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 ''robotic vacuums and wet/dry mops, their docking stations, and associated parts and components (including software)'';

(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:

iRobot Corporation
8 Crosby Drive
Bedford, MA 01730

(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:

SharkNinja Operating LLC, 89 A St. #100, Needham, MA 02494
SharkNinja Management LLC, 89 A St. #100, Needham, MA 02494
SharkNinja Management Co., 89 A St. #100, Needham, MA 02494
SharkNinja Sales Co., 89 A St. #100, Needham, MA 02494
EP Midco LLC, 89 A St. #100, Needham, MA 02494
SharkNinja Hong Kong Co. Ltd., 238 Des Voeux Road Central, Sheung Wan, Central & Western District—Hong Kong Island, Hong Kong

(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), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant 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: February 25, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–04294 Filed 3–1–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–801]

Importer of Controlled Substances Application: Stepan Company

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Stepan Company has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 1, 2021. Such persons may also file a written request for a hearing on the application on or before April 1, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 08, 2021, Stepan Company, 100 West Hunter Avenue, Maywood, New Jersey 07607–1021, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug Code	Schedule
Coca Leaves	9040	II

The company plans to import the listed controlled substance in bulk for the manufacture of controlled substances for distribution to its customers. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–04245 Filed 3–1–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0039]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection Bioterrorism Preparedness Act: Entity/Individual Information

AGENCY: Federal Bureau of Investigation, Criminal Justice Information Services Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until May 3, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James J. Sheets, Biometric Services Section, Identity Management Unit, Federal Bureau of Investigation, CJIS Division, Biometric Technology Center, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Federal Bureau of Investigation Bioterrorism Preparedness Act: Entity/Individual Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form is FD–961. The applicable component within the Criminal Justice Information Services Division, Department of Justice (DOJ), Federal Bureau of Investigation (FBI).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:.*

Primary: City, country, state, federal, individuals, business or other for profit, and not-for-profit institute. This collection is needed to receive names and other identifying information submitted by individuals requesting access to specific agents or toxins, and consult with appropriate officials of the Department of Health and Human Services and the Department of Agriculture as to whether certain individuals specified in the provisions should be denied access to or granted limited access to specific agents.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 3,655 (FY 2020) and respondents at 1 hour 30 minutes for the FD–961 form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is approximately 5,483 hours annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 24, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–04208 Filed 3–1–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

State All Payer Claims Databases Advisory Committee

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: This notice announces the establishment of the State All Payer Claims Databases Advisory Committee (Committee) and also solicits nominations for members to be appointed by the Secretary of Labor (Secretary). The No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, requires the Department of Labor (DOL) to establish (and periodically update) a standardized reporting format for voluntary reporting by group health plans to State All Payer Claims Databases and provide guidance to States on collecting data. The Act also directs the Secretary to convene an advisory committee.

DATES: Nominations for membership will be considered if they are received by March 16, 2021.

ADDRESSES: Send nominations to *SAPCDACnominations@dol.gov* to the attention of Elizabeth Schumacher, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, DOL.

FOR FURTHER INFORMATION CONTACT: Elizabeth Schumacher, Employee Benefits Security Administration, DOL at 202–693–8335. For press inquiries contact Grant Vaught, Office of Public Affairs, DOL at 202–693–4672.

SUPPLEMENTARY INFORMATION:

I. Background

Section 735 of the Employee Retirement Income Security Act of 1974, as added by section 115(b) of the No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, div. BB, tit. I, Public Law 116–260 (Dec. 27, 2020), requires the DOL to establish (and periodically update) a standardized reporting format for voluntary reporting by group health plans to State All Payer Claims Databases and provide guidance to States on collecting data. The Act also directs the Secretary to convene an advisory committee consisting of no more than 15 members to advise the Secretary regarding the format and guidance for voluntary reporting by group health plans to State All Payer Claims Databases. The Committee will remain in existence from the time of its convention until it submits its report with its recommendations to the Secretary, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Energy and Commerce and the Committee on Education and Labor of the House of Representatives. The Committee is governed by the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

II. Charter, General Responsibilities, and Composition of the State All Payer Claims Databases Advisory Committee

A. Charter Information and General Responsibilities

On February 17, 2021, the Acting Secretary approved the charter establishing the Committee. The Committee will advise the Secretary regarding the standardized reporting format for the voluntary reporting by group health plans to State All Payer Claims Databases. Reporting will include medical claims, pharmacy claims, dental claims, and eligibility and provider files collected from private

and public payers. The Committee will also advise the Secretary on the guidance provided to States on the process by which States may collect such data in the standardized reporting format.

The Committee must submit a report to the Secretary, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Energy and Commerce and the Committee on Education and Labor of the House of Representatives that includes recommendations on the establishment of the format and guidance no later than 180 days from the date of enactment of the Consolidated Appropriations Act, 2021, with a due date of June 25, 2021.

A copy of the charter for the Committee may be obtained by visiting the Department's website at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee.*

B. Composition of the State All Payer Claims Databases Advisory Committee

The Committee shall consist of no more than 15 members appointed by the Secretary (in coordination with the Secretary of Health and Human Services (HHS)), and the Comptroller General of the United States to serve as Regular Government Employee or Special Government Employee members. The Committee shall be composed of the Assistant Secretary of the Employee Benefits Security Administration of DOL, or a designee of such Assistant Secretary; the Assistant Secretary for Planning and Evaluation of the Department of HHS, or a designee of such Assistant Secretary; and members appointed by the Secretary, in coordination with the Secretary of HHS, including: A member to serve as the Committee chair; a representative of the Centers for Medicare & Medicaid Services; a representative of the Agency for Healthcare Research and Quality; a representative of the Office for Civil Rights of the Department of HHS with expertise in data privacy and security; a representative of the National Center for Health Statistics; a representative of the Office of the National Coordinator for Health Information Technology; and a representative of a State All Payer Claims Databases.

Members appointed by the Comptroller General of the United States shall include: A representative of an employer that sponsors a group health plan; a representative of an employee organization that sponsors a group health plan; an academic researcher with expertise in health economics or health services research; a consumer advocate; and two additional members.

Members of the Committee must have distinguished themselves in fields of health services research, health economics, health informatics, data privacy and security, or the governance of State All Payer Claims Databases, or represent organizations likely to submit data to or use the database, including patients, employers, employee organizations that sponsor group health plans, health care providers, health insurance issuers, or third-party administrators of group health plans.

III. Submissions of Nominations

DOL is requesting nominations for a Committee chair and a representative of a State All Payer Claims Databases. DOL will consider qualified individuals who are self-nominated or are nominated by organizations representing affected stakeholders when selecting those representatives. DOL will make every effort to appoint members to serve on the Committee from among those candidates determined to have the technical expertise required to meet specific statutory categories and Departmental needs and in a manner intended to ensure an appropriate balance of membership. Selection of Committee membership will be consistent with achieving the greatest impact, scope, and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, race, gender, disability, sexual orientation, and gender identity.

DOL reserves discretion to appoint members to serve on the Committee who were not nominated in response to this notice if necessary to meet specific statutory categories and Departmental needs in a manner intended to ensure an appropriate balance of membership.

DOL has a process for vetting nominees under consideration for appointment. DOL will contact nominees for information on their status as registered lobbyists. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment to this Committee. Additionally, nominees will be evaluated in accordance with Secretary's Order 10–2020 (85 FR 71104) to ensure they are financially independent from the Department programs and activities for which they may be called upon to provide advice. Follow-up communications with nominees may occur as necessary throughout the process.

Any interested person may nominate one or more qualified individuals (self-nominations will also be accepted). Each nomination must include the following information:

1. A letter of nomination that contains contact information for both the nominator and nominee (if not the same).

2. A statement from the nominee that he or she is willing to serve on the Committee if appointed, will attend and participate in Committee meetings regularly, and has no conflicts of interest that would preclude Committee membership.

3. The nominee should also indicate which category or categories of stakeholders designated by the statute he or she is willing to represent, along with an explanation of interest in serving on the Committee. For self-nominations, this information may be included in the nomination letter.

4. A curriculum vitae that indicates the nominee's educational experience, as well as relevant professional experience.

5. Two letters of reference that support the nominee's qualifications for participation on the Committee. For nominations other than self-nominations, a nomination letter that includes information supporting the nominee's qualifications may be counted as one of the letters of reference.

Please do not include information that you do not want publicly disclosed.

To ensure that a nomination is considered, the Department must receive all of the nomination information specified in section III of this notice by March 16, 2021. Nominations should be sent to the address specified in the **ADDRESSES** section of this notice.

Dated: February 24, 2021.

Ali Khawar,

Principal Deputy Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2021–04241 Filed 3–1–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2019–0004]

Gestamp West Virginia: Grant of Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Permanent Variance.

SUMMARY: In this notice, OSHA grants a permanent variance to Gestamp West Virginia from the provisions of the

OSHA standard that regulate the control of hazardous energy (lockout/tagout).

DATES: The permanent variance specified by this notice becomes effective on March 2, 2021 and shall remain in effect until OSHA revokes this permanent variance.

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 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 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

Copies of this **Federal Register** *notice:* Electronic copies of this **Federal Register** notice are available at *https://www.regulations.gov.* This **Federal Register** notice and other relevant information are also available at OSHA's web page at *https://www.osha.gov.*

I. Notice of Application

On July 30, 2018, OSHA received a variance application from Gestamp West Virginia LLC (''Gestamp'' or ''the applicant'') from the provision of the OSHA standard that regulates the control of hazardous energy (''lockout/tagout'' or ''LOTO'') for their South Charleston, West Virginia facility. Specifically, Gestamp sought a variance from the provision of the standard that requires ''all energy isolating devices needed to control the energy to the machine or equipment shall be physically located and operated in a manner as to isolate the machine or equipment from the energy source(s).'' (29 CFR 1910.147(d)(3)). Gestamp also requested an interim order pending OSHA's decision on the application for a variance (Document ID No. OSHA–2019–0004–0002).

According to the application, Gestamp makes parts for the automotive industry. Gestamp uses a Trumpf laser cell to trim excess metal from automotive parts and burn holes into those parts. The laser operates using a stream of monochromatic coherent light to emit very high levels of energy to cut metal parts. The laser trimming process occurs within a fully enclosed machine structure (cell), which contains the laser that is mounted onto a multi-axis transport to allow the laser to cut at a variety of angles; a turntable to load the rough parts to be cut using the laser; a water chilling system used to cool the laser; and numerous engineering controls that prevent unauthorized access to the interior of the cell. When actuated, the turntable rotates to the inside of the machine and presents the parts to the laser. The laser system functions in a robotic manner, with axes of motion to cut the metal parts. The laser is managed by a Human Machine Interface (HMI), an interface by which the operator inputs commands to and receives information from the laser cell machine.

The laser trimming process creates a byproduct of chaff, dust, dirt, chips, and slugs that must be cleaned from the machine enclosure cell frequently to enable the laser to function properly. The cleaning is performed by operators and/or maintenance personnel inside the cell and involves sweeping up the byproducts and debris left on the floor of the cell during the operation. These cleaning activities occur at the end of each shift and typically require about 15 minutes to complete.

Gestamp asserts that without frequent cleaning, the laser system would not function properly. Further, the applicant asserts that while the laser has the capability of being de-energized and isolated as required by OSHA and ANSI standards, frequent powering down and locking out of the laser greatly reduces the performance and overall life of the laser because it takes anywhere from 30 minutes to several hours to power back up after being completely shut down, which reduces the efficiency of the laser. The applicant notes that powering down the laser to perform cleaning activities requires the addition of auxiliary lighting, which would involve the use of extension cords and portable lights, potentially introducing fall and shock hazards. Additionally, the applicant notes that the primary electrical disconnects are not designed or intended for frequent cycling and would increase the risk of arc flash hazards to employees.

OSHA initiated a technical review of Gestamp's variance application and developed a set of follow-up questions regarding the assertion that the alternative measures provide equivalent worker protection. On March 15, 2019, Gestamp provided supplemental materials to support the variance application including: A side by side analysis of the requirement of the standard and the proposed alternative (OSHA–2019–0004–0005), a safety work instruction outlining their proposed alternative (OSHA–2019–0004–0004), and a description of Gestamp's Lockout/Tagout Program (OSHA–2019–0004–0003). In reviewing the application, OSHA evaluated the alternative energy control procedures identified in the variance application and the supplemental materials provided by Gestamp.

OSHA reviewed Gestamp's application for the variance and interim order and determined that they were appropriately submitted in compliance with the applicable variance procedures in Section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act, 29 U.S.C. 655(d)) and OSHA's regulations at 29 CFR 1905.11 (''Variances and other relief under section 6(d)''), including the requirement that the applicant inform workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

Following this review, OSHA determined that the applicant's proposed alternative, subject to the conditions in the request and imposed by the Interim Order, provides a workplace that is as safe and healthful as those required by the OSHA standard. On August 5, 2020, OSHA published a **Federal Register** notice announcing Gestamp's application for a permanent variance, stating the preliminary determination along with the basis of that determination, and granting the Interim Order (85 FR 47422). OSHA requested comments on each.

OSHA did not receive any comments or other information disputing the preliminary determination that the alternative was at least as safe as OSHA's standard, nor any objections to OSHA granting a permanent variance. One comment was received (OSHA–2019–0004–0006) supporting Gestamp's application. This comment did not require a response from the agency. Accordingly, through this notice OSHA grants a permanent variance subject to the conditions set out in this document.

II. The Variance Application

A. Background

Gestamp's variance application and the responses to OSHA's follow-up questions included the following: Detailed descriptions of the laser cutting process; the equipment used in the laser cutting process; the proposed alternative to completely isolating the laser during cleaning activities; and technical evidence supporting Gestamp's assertions that its alternative methods provide equivalent worker protection.

According to the information included in the application, Gestamp's

laser is considered a Class 4 operation. Class 4 operations are defined by ANSI as ''very dangerous to the eyes and skin, with a risk of fire and explosion.[1] No workers are allowed inside the laser cell while the laser is being used. Instead, the operator's station is located outside of the laser cell and the operator uses hand controls to activate the laser turntable. The laser cutting system is a fully enclosed structure, with the laser operating similar to a robot. The laser is affixed to the end of arm tooling within this fixed structure. Stamped parts are loaded into the cell and unloaded from the cell structure via a turntable from outside of the laser cell. When actuated, the turntable rotates to the inside of the machine and presents the parts to the laser. The turntable cannot rotate until the operator clears the light curtain, which is used as a safeguard blocking access between the turntable and the operator's station.

As noted above, the laser trimming process creates a byproduct of chaff, dust, direct, chips, slugs, and debris, and the laser system must be cleaned to enable the laser to function properly. The laser cell has access doors to enable cleaning and certain other necessary tasks to be performed inside the cell. The access doors utilize interlocked switches that disable hazardous motion of the turntable and laser energy when opened.

The machine enclosure of the Trumpf laser cell is protected by two entry/exit points: A far access door and a near access door. Each access door has an interlock switch that is integrated into the laser and machinery motions. When the door to the laser cell is opened, the release of laser energy is inhibited and the machine axes cannot move. Further, Gestamp added red mechanical latches (hasps) to the external side of each entry door that allow a lock or a group lockout hasp or lock to be affixed, thus locking the hatch in its location.

In addition, Gestamp has implemented procedures to prevent the door from closing during laser cell cleaning activities, which could actuate the system. Gestamp requires all personnel entering the laser cell to individually lockout by placing their individual lock on the slide bar. Each employee entering the laser cell must remove his own personal key from his individual lock or hasp, take the key into the cell, and keep the key in his possession the entire time he is in the laser cell. If more than one employee enters the cell, one of the employees shall be designated the Leader of the cleaning crew. The Leader can only remove his lock after he has verified that everyone else in the cleaning crew has left the laser cell.

Gestamp contends that the alternative energy control procedures included in the application provide the workers with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions of OSHA's control of hazardous energy (lockout/tagout) standard. Gestamp certifies that it provided employee representatives of affected workers with a copy of the variance application. Gestamp also certifies that it notified the workers of the variance application by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed the workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

B. Variance From 29 CFR 1910.147(d)(3)

As an alternative means of complying with the requirements of 1910.147(d)(3), Gestamp proposed to use a comprehensive engineered system and appropriate administrative procedures. The applicant referenced ANSI/ASSE Z244.1–2016, clause 8, which states that ''Lockout or tagout shall be used unless the user can demonstrate an alternative method will provide effective protection by persons. When lockout or tagout is not used, then alternative methods shall be used only after the hazards have been assessed and risks documented'' as the basis for their alternative lockout method. Gestamp asserted in the variance application that the cleaning task within the Trumpf laser cell is one that requires access to the machine in a manner that renders full lockout infeasible. Because the Trumpf laser cell is a Class 4 operation, no one is allowed inside the machine enclosure during laser operations. Gestamp also asserted in the variance application that because the cleaning task occurs on a frequent basis, regular powering down and locking out of the laser to perform the routine cleaning operations could damage the laser over time. Further, full lockout of the laser cell requires the use of auxiliary lighting sources, which could introduce fall and shock hazards into the cleaning operation. Additionally, the design of the Trumpf laser cell includes advanced control systems that prevent engagement of the laser while the laser cell is occupied. As an alternative energy control procedure, Gestamp has developed an engineered system that uses red mechanical latches attached to the external side of each door of the laser cell. The latches are secured to the frame of the machine with two metal screws and have a locking capacity that allows a lock or a group lockout hasp to be affixed; this latch prevents the door from closing and the laser from being able to be energized during laser cell cleaning operations.

Gestamp maintained that use of the proposed latch system provides a level of safety equivalent to what can be achieved by strict compliance with the standard at 1910.147(d)(3). According to Gestamp's variance application, equivalent safety is achieved by prohibiting the release of laser energy during cleaning operations utilizing a modified door latch that prevents unintentional re-energization of the laser. In the variance application, Gestamp provided the following step-by-step details of the safety procedures to be followed prior to and following cleaning activities:

Process To Enter Trumpf Laser Cell To Perform Cleaning Activities

1. Communicate to the Operator and coworkers in the area that cleaning will take place. At the Human Machine Interface (HMI) screen, change the Series Production from ''Continuous Job'' to ''Single Job.'' Once the turntable has come to a complete stop, open one of the doors on the side of the laser cell by using the handle.

2. After the door is open, communicate the lockout to coworkers and move the red slide bar to prevent the door from being shut while inside. All personnel entering the laser cell must individually lockout, by placing their individual lock on the slide bar or hasp. If more than one person is to enter on either side, a lockout hasp must be used.

3. After locking out on the laser cell, verify that ''Feed Hold Through Safety Device Error'' is displayed on the HMI screen.

4. To verify that the turntable will not move while working inside of the laser cell, hit the green activation button. *Employees can enter the laser cell only after these four (4) steps are completed.*

5. When work is completed inside the laser cell, all employees who entered the cell, except the Leader when more than one employee entered, shall exit and remove their individual locks. Once all other employees are outside of the laser cell, the Leader must verify his location and hit the Danger Zone Acknowledge Button on the inside of the cell door. The Leader must immediately exit the cell, remove his

[1] ANSI B11.21 and ANSI Z136.1

lock, move the slide bar back to allow the door to shut, and shut the door.

6. Once cleaning of the laser cell is complete and all employees are clear of the restricted area, place the laser HMI back into production by placing the Series Production from ''Single Job'' to ''Continuous Job'' by clicking the ''Continuous Job'' button.

7. After the HMI has been released to production, press the green button which resets the light curtains and causes the robot to place the next part on the turntable.

Process To Restart Trumpf Laser Cell After Door Is Opened

1. Remove all padlocks from mechanical latch from the far access door.

2. Open the mechanical latch.

3. Visually inspect area for the presence of persons or tools.

4. Close the far machine enclosure door.

5. Walk to near access door.

6. Remove all padlocks from mechanical latch from the near access door.

7. Open the mechanical latch.

8. Visually inspect area for the presence of persons or tools.

9. Press the reset switch on inside of the machine enclosure.

10. Close the door within 3–4 seconds of pressing the reset switch.

11. Turn the key switch on the HMI to enable operations.

12. Engage HMI to activate laser.

13. Enable continuous mode operation (push button) within HMI.

The proposed door latch system cannot be easily defeated or tampered with. Gestamp asserts that this alternative meets the requirements for control reliability as stated in ANSI B11.0 and ANSI Z244.1, in that no single fault of a component, wire, device or other element will result in the loss of the safety function.[2] According to the variance application, in the event of a fault, the laser will achieve a safe state by inhibiting lasing, machine motions, and the release of hazardous energy. In addition, the system includes system fault monitoring, tamper resistance, and exclusive employee control over lockout devices. The Trumpf laser machine enclosure has a door interlock switch that is integrated to the laser and machinery motions. When the door to the laser cell is open, the release of laser energy is inhibited and the machine axes cannot move; therefore the laser will not operate.

To enhance the lockout functions of the Trumpf laser cell, Gestamp added red mechanical latches to the external side of each entry door to the laser cell. The lockable interface switches used with the mechanical latches are designed to be used as lockable devices. The circuitry of the lockable interlock switches inhibit both machinery motions and laser energy release with the Trumpf enclosure door switches and will not operate when disengaged.

C. Technical Review

OSHA conducted a review of Gestamp's application and the supporting technical documentation. After completing the review of the application and supporting documentation, OSHA concludes that Gestamp:

1. Modified the access door with red mechanical latches with a slide bar to prevent the door from being closed while cleaning activities are performed within the laser cell;

2. Installed a personal lock control system and implemented administrative energy control procedures that prevent employee exposure to hazards associated with energy while performing cleaning activities within the laser cell;

3. Performed a job hazard analysis for tasks associated with cleaning the laser cell and conducted and documented an electrical isolation analysis, system and functional safety reviews, and control reliability analysis to verify that the use of the latch system and administrative energy control procedures prevent the closure of the doors to the laser cell, prevent mistaken or intentional re-energization, and maintain immobility in the event of fault conditions;

4. Developed detailed administrative energy control procedures for entering the laser cell to perform cleaning functions and distinguished these work procedures from other tasks that require full lockout;

5. Implemented detailed administrative energy control procedures designed to ensure that each authorized employee applies a personal lock to the secondary group lock box;

6. Made the administrative energy control policies and procedures available to employees;

7. Trained authorized and affected employees on the application of the proposed alternative work practice and associated administrative energy control policies and procedures; and

8. Developed a LOTO procedure which includes administrative controls to minimize the potential for authorized and affected employees to enter the laser cell when harm could occur.

After the technical review identified above, OSHA concludes that Gestamp has established an alternative work practice that provides workers protection equivalent to that required by the standard. Specifically, the LOTO process for the Trumpf laser cell identified in the variance application regulates the control of hazardous energy from the laser during the maintenance task of cleaning.

III. Description of the Conditions Specified for the Permanent Variance

As previously indicated in this notice, OSHA conducted a review of Gestamp's application and supporting documentation. OSHA determined that Gestamp developed and proposed to implement effective alternative means of protection that provides protection to their employees ''as safe and healthful'' as protections required within paragraph 1910.147(d)(4)(iii) of OSHA's LOTO standard during the maintenance task of cleaning the Trumpf laser cell. Therefore, on August 5, 2020, OSHA published a **Federal Register** notice announcing Gestamp's application for a permanent variance and interim order, grant of an interim order, and request for comments (85 FR 47422). The agency requested comments by September 4, 2020. There was one comment received in response to this notice in support of the application (OSHA–2019–0004–0006), however this comment did not require a response from OSHA.

During the period starting with the August 5, 2020, publication of the preliminary **Federal Register** notice announcing grant of the Interim Order until the agency modifies or revokes the Interim Order or makes a decision on the application for a permanent variance, the applicant was required to comply fully with the conditions of the Interim Order as an alternative to complying with the requirements of paragraph 1910.147(d)(4)(iii). With the publication of this notice, OSHA is revoking the Interim Order granted to the employer on August 5, 2020.

This section describes the conditions that comprise the alternative means of compliance with 29 CFR 1910.147(d)(4)(iii). Also, these conditions provide additional detail regarding the conditions that form the basis of the permanent variance OSHA is granting to Gestamp.

[2] ANSI B11.0 defines control reliability as the capability of the [machine] control system, the engineering control devices, other control components and related interfacing to achieve a safe state in the event of a failure within the safety-related parts of the control system.

ANSI Z244.1 defines control reliability as the capability of the machine, equipment or process control system, the safeguarding, other control components and related interfacing to achieve a safe state in the event of a failure within their safety-related functions.

Condition A: Scope

The scope of the permanent variance limits coverage to the work conditions specified under this condition. Clearly defining the scope of the permanent variance provides Gestamp, their employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the permanent variance applies. To the extent that Gestamp conducts work outside the scope of this variance, it will be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers) [3] may request a permanent variance for a specific workplace or workplaces. When OSHA approves a permanent variance, it applies only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated as part of the project. In this instance, OSHA's grant of a permanent variance applies only to the applicant, Gestamp, and only at the South Charleston, WV plant and to no other employers or any other Gestamp plant locations.

Condition B: List of Abbreviations

The following abbreviations apply to this permanent variance:

1. CFR—Code of Federal Regulations
2. JHA—Job hazard analysis
3. HMI—Human Machine Interface
4. OSHA—Occupational Safety and Health Administration
5. OTPCA—Office of Technical Programs and Coordination Activities

Condition C: List of Definitions

The permanent variance includes definitions for a series of terms. Defining these terms serves to enhance the applicant's and the employees' understanding of the conditions specified by the proposed permanent variance.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this proposed permanent variance, or any one of his authorized representatives. The term ''employee'' has the meaning defined and used under the OSH Act (29 U.S.C. 651 *et seq.*).

2. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions associated with the Trumpf laser cell that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3. *Energy isolating device*—a mechanical device that physically prevents the transmission or release of energy, including but not limited to the following: A manually operated electrical circuit breaker; a disconnect switch; a manually operated switch by which the conductors of a circuit can be disconnected from all ungrounded supply conductors, and, in addition, no pole can be operated independently; a line valve; a block; and any similar device used to block or isolate energy. Push buttons, selector switches, and other control circuit type devices are not energy isolating devices.

4. *Group Lockout/Tagout Mechanism*—any device or mechanism that when used as part of a group LOTO system, permits each individual employee to use his personal lockout or tagout devices (Group lockout hasps or lockboxes that procedurally control equipment reenergization) to physically secure energy isolating devices.[4]

5. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

6. *Leader*—a single authorized employee who assumes the overall responsibility for the control of hazardous energy for all members of the group if more than one employee enters the Trumpf laser cell to perform cleaning activities.

7. *Lockout*—the placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

8. *Lockout device*—a device that utilizes a positive means such as a lock, either key or combination type, to hold an energy isolating device in the safe position and prevent the energizing of a machine or equipment.

9. *Personal lock and key*—a durable, standardized substantial and uniquely identified device (a lock) that is maintained and controlled by a single authorized employee whose name is attached to the device. The key is unique to the device and is equally maintained and controlled by the authorized employee whose name is attached to the device.

10. *Operator*—a production operator responsible for performing laser assembly operations pursuant to Gestamp company policies and procedures.

11. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter or the work.

12. *Servicing and/or maintenance*—workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming of machines or equipment and making adjustments or tool changes, where the employee may be exposed to the unexpected energization or startup of the equipment or release of hazardous energy.

13. *Tagout*—the placement of a tagout device on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

Condition D: Safety and Health Practices

This condition requires the applicant to: (1) Modify certain controls at the entry door to the laser cell by ensuring that exclusive control is provided to each employee involved in cleaning activities within the machine, under the direction of the Leader who oversees energy control operations during the cleaning activity; (2) utilize a latch with a slide bar, designed to prevent the door from closing; (3) ensure that opening the door of the laser cell shuts down the machinery in the cell; and (4) adhere to the Group LOTO procedure in the Laser Cleaning Work Instruction provided to OSHA with the variance application.

Condition E: Steps Required To De-energize the System

This condition requires the applicant to develop and implement a detailed procedure for de-energizing the laser cell in order to perform the maintenance task of cleaning within the laser cell. The procedure for de-energizing the laser cell includes a series of steps to remove the ability of the Trumpf laser cell to become energized before or during the maintenance task of cleaning.

[3] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

[4] See 29 CFR part 1910.147(f)(3) Group Lockout/Tagout.

Condition F: Steps Required To Re-energize the Laser Cell

This condition requires the applicant to develop and implement a detailed procedure for re-energizing the laser cell in order to resume normal laser cutting operations. The procedure for re-energizing the laser cell includes a series of steps so that the Trumpf laser cell can resume laser cutting activities when cleaning activities within the laser cell are complete.

Condition G: Communication

This condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents and corrective actions taken, prior to the start of each shift. The condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during laser cleaning activities. Availability of such reliable means of communications enables affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during laser cleaning operations.

Condition H: Worker Qualification and Training

This condition requires Gestamp to develop and implement an effective hazardous energy control qualification and training program for authorized employees involved in cleaning activities in or around the laser cell. Additionally, Condition H requires Gestamp to train each affected employee on the purpose and use of the alternative energy control procedures. All training must be provided in a language that the employees can understand.

The condition specifies the factors that an affected worker must know to perform the maintenance task of cleaning inside the laser cell, including how to enter, work in, and exit from the laser cell under both normal and emergency conditions. Having well-trained and qualified workers performing laser cleaning activities is intended to ensure that they recognize, and respond appropriately to, electrical safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, thereby preventing worker injury, illness, and fatalities.

Condition I: Inspections, Tests, and Accident Prevention

Condition I requires the applicant to develop, implement, and operate an effective program of frequent and regular inspections of the laser equipment, electrical support systems, and associated work areas. This condition will help to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct the maintenance task of cleaning in the Trumpf laser cell.

This condition also requires the applicant to conduct tests, inspections, corrective actions and repairs involving the use of the energy isolation devices identified in the application for a permanent variance. Further, this requirement provides the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems and to determine that the actions taken to correct defects are appropriate.

Condition J: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904, Gestamp must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to electrical conditions by completing OSHA Form 301 Incident Report and OSHA Form 300 Log of Work Related Injuries and Illnesses.

Condition K: Notifications

Under this condition, the applicant is required, within specified periods of time, to: (1) Notify OSHA of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of cleaning activities around the laser cell; (2) provide OSHA a copy of the incident investigation report (using OSHA Form 301 Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA Form 301 Injury and Illness Incident Report information on the conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Charleston, West Virginia OSHA Area Office within 15 working days should the applicant need to revise the procedures to accommodate for any changes in the maintenance task of cleaning the Trumpf laser cell that affect Gestamp's ability to comply with the conditions of the permanent variance; (6) provide OTPCA and the Charleston, West Virginia Area Office within 15 working days should the applicant need to revise the energy isolation procedures to accommodate changes in the application of the door switch that affect the ability to comply with the conditions of the permanent variance; and (7) provide OTPCA and the Charleston, West Virginia Area Office, by January 31 of each calendar year, with a report evaluating the effectiveness of the alternative energy control procedures in the previous calendar year.

Additionally, Gestamp must notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the permanent variance to a successor company. In addition, the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the permanent variance and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the permanent variance.

IV. Decision

As described earlier in this notice, after reviewing the proposed alternative, OSHA determined that Gestamp developed, and proposed to implement, effective alternative means of protection that protect its employees as effectively as paragraphs 1910.147(d)(4)(iii) of OSHA's LOTO standard during the maintenance task of cleaning the Trumpf laser cell. Further, under section 6(d) of the OSH Act (29 U.S.C. 655(d)), and based on the record discussed above, the agency finds that when the employer complies with the conditions of the variance, the working conditions of the employer's workers are at least as safe and healthful as if the employer complied with the working conditions specified by paragraph 1910.147(d)(4)(iii) of OSHA's LOTO standard. Therefore, under the terms of this variance Gestamp must: (1) Comply

with the conditions listed below under section V of this notice (''Order'') for the period between the date of this notice and until the agency modifies or revokes this final order in accordance with 29 CFR 1905.13; (2) comply fully with all other applicable provisions of 29 CFR part 1910; and (3) provide a copy of this **Federal Register** notice to all employees affected by the conditions using the same means it used to inform these employees of its application for a permanent variance.

V. Order

As of the effective date of this final order, OSHA is revoking the Interim Order granted to the employer on August 5, 2020 (85 FR 47422).

OSHA issues this final order authorizing Gestamp West Virginia LLC (''Gestamp'' or ''the applicant'') to comply with the following conditions instead of complying with the requirements of paragraphs 29 CFR 1910.147(d)(4)(iii) of OSHA's LOTO standard during the maintenance task of cleaning the Trumpf laser cell. This final order applies to all Gestamp employees located at 3100 MacCorkle Avenue SW, Building 307, South Charleston, West Virginia 25303.

A. Scope

1. This permanent variance applies only to the maintenance task of cleaning the Trumpf laser cell at Gestamp's South Charleston, WV, establishment. This work is to be performed by authorized employees under the alternative energy control procedures submitted to OSHA as part of this application for a permanent variance.

2. No other servicing and/or maintenance work, including electrical maintenance (such as troubleshooting or maintenance covered under 29 CFR 1910.333), may be performed using the conditions of this interim order. These activities are to be performed under full lockout as required by 29 CFR 1910.147.

3. Except for the requirements specified by 29 CFR 1910.147(d)(3), Gestamp must comply fully with all other applicable provisions of 29 CFR 1910.147 during cleaning activities of the laser cell.

4. The Interim Order granted to Gestamp on August 5, 2020 (85 FR 47422), is hereby revoked.

B. List of Abbreviations

The following abbreviations apply to this permanent variance:

1. CFR—Code of Federal Regulations
2. JHA—Job hazard analysis
3. HMI—Human Machine Interface
4. OSHA—Occupational Safety and Health Administration
5. OTPCA—Office of Technical Programs and Coordination Activities

C. Definitions

The following definitions apply to this permanent variance:

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this permanent variance, or any one of his authorized representatives. The term ''employee'' has the meaning defined and used under the OSH Act (29 U.S.C. 651 *et seq.*).

2. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions associated with the Trumpf laser cell that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3. *Energy isolating device*—a mechanical device that physically prevents the transmission or release of energy, including but not limited to the following: A manually operated electrical circuit breaker; a disconnect switch; a manually operated switch by which the conductors of a circuit can be disconnected from all ungrounded supply conductors, and, in addition, no pole can be operated independently; a line valve; a block; and any similar device used to block or isolate energy. Push buttons, selector switches, and other control circuit type devices are not energy isolating devices.

4. *Group Lockout/Tagout Mechanism*—any device or mechanism that when used as part of a group LOTO system, permits each individual employee to use his personal lockout or tagout devices (group lockout hasps or lockboxes that procedurally control equipment re-energization) to physically secure energy isolating devices.

5. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

6. *Leader*—a single authorized employee that assumes the overall responsibility for the control of hazardous energy if more than one employee enters the Trumpf laser cell to perform cleaning activities.

7. *Lockout*—the placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

8. *Lockout device*—a device that utilizes a positive means such as a lock, either key or combination type, to hold an energy isolating device in the safe position and prevent the energizing of a machine or equipment.

9. *Personal lock and key*—a durable, standardized substantial and uniquely identified device (a lock) that is maintained and controlled by a single authorized employee whose name is attached to the device. The key is unique to the device and is equally maintained and controlled by the authorized employee whose name is attached to the device.

10. *Operator*—a production operator responsible for performing laser assembly operations pursuant to Gestamp company policies and procedures.

11. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter or, the work.

12. *Servicing and/or maintenance*—workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming of machines or equipment and making adjustments or tool changes, where the employee may be exposed to the unexpected energization or startup of the equipment or release of hazardous energy.

13. *Tagout*—the placement of a tagout device on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

D. Safety and Health Practices

1. Gestamp must modify certain controls at the entry door to the laser cell by ensuring that exclusive control is provided to each employee involved in cleaning activities within the laser cell, under the direction of the Leader who oversees energy control operating during the cleaning activity;

2. Gestamp must utilize a latch with a slide bar, designed to prevent the door from closing;

3. Gestamp must ensure that opening the door to the laser cell shuts down the machinery in the cell;

4. Gestamp must adhere to the Group LOTO procedure in the Laser Cleaning Work Instruction provided to OSHA with the variance application;

5. Gestamp must implement the safety and health instructions included in the manufacturer's operations manuals for

the Trumpf laser cell and the safety and health instructions provided by the manufacturer for the operation of laser cutting equipment; and

6. Gestamp must implement a procedure to ensure that no other servicing and/or maintenance activities aside from cleaning will be performed on the laser cutter, unless full lockout is used.

E. Steps Required To De-Energize the System

Gestamp must implement a detailed procedure for de-energizing the laser cutting machine that will consist of the following steps to ensure that the laser cell door is prevented from closing and the machine starting during cleaning activities within the laser cell:

1. The authorized employee entering the laser cell will communicate to the Operator and co-workers in that area that cleaning will take place;

2. At the HMI screen, the Operator shall change the Series Production from ''Continuous Job'' to ''Single Job'';

3. Once the turntable has come to a complete stop, the Operator shall open one of the doors on the side of the laser cell by using the handle;

4. After the door is open, the Operator shall communicate the lockout to his co-workers and move the red slide bar to prevent the door to the laser cell from being shut while personnel are inside;

5. All personnel entering the laser cell must individually lockout, by placing a lock on the slide bar or hasp. If more than one person is to enter on either side, a lockout hasp must be used;

6. Each employee entering the cell must remove his own personal key from the lock or hasp, take the key into the cell, and keep the key in his possession the entire time he is in the cell;

7. If more than one employee enters the laser cell, one of the employees shall be designated the Leader of the cleaning operation;

8. After locking out the laser cell, the Operator shall verify that the ''Feed Hold Through Safety Device Error'' is displayed on the HMI screen; and

9. To verify that the turntable will not move while working inside of the laser cell, the Operator shall hit the green activation button. *Entry is not to be made into the cell until the previous 8 steps have been completed.*

F. Steps Required To Re-Energize the Laser Cell

Gestamp must implement a detailed procedure for re-energizing and intentionally starting motion in the laser cutter in order to resume normal operations at the conclusion of the cleaning operation. The procedure for re-energizing the laser cell will consist of the following steps:

1. When work is completed inside the laser cell, all employees who entered the cell, except the Leader (when more than one employee entered), shall exit and remove their locks;

2. The Leader/Solo Employee shall open the mechanical latch;

3. The Leader/Solo Employee shall visually inspect the area for the presence of persons or tools within the laser cell;

4. Once all other employees are outside of the laser cell, the Leader/Solo Employee must verify his location and hit the Danger Zone Acknowledge Button on the inside of the cell door;

5. The Leader/Solo Employee must exit immediately, remove his lock, move the slide bar back to allow the door to shut, and shut the door. The door must shut within 3–4 seconds of hitting the Danger Zone Acknowledge Button. The 3–4 second limitation ensures that no one can enter or re-enter into the machine enclosure between the visual inspection and restart.

6. Once the cleaning operation is complete and employees are clear of the restricted area, the Leader/Solo Employee shall place the laser HMI back into production by placing the Series Production from ''Single Job'' to ''Continuous Job'' by pressing the ''Continuous Job'' button;

7. After the HMI has been released to production, the Leader/Solo Employee shall press the green button which resets the light curtains and causes the robot to place the next part on the turntable; and

8. Both entry doors to the laser cell must be closed before operations can resume. An engineering control within the Trumpf laser cell prevents engagement of the laser until both doors are closed.

G. Communication

Gestamp must:

1. Implement a system that informs workers using energy isolation devices of any hazardous occurrences or conditions that might affect their safety; and

2. Provide a means of communication among affected workers where unassisted voice communication is inadequate.

H. Worker Qualifications and Training

Gestamp must develop and implement a detailed worker qualification and training program. All training must be provided in a language that the employees can understand. Gestamp must:

1. Develop an energy control training program and train each authorized employee on the latch system and the procedures required under it;

2. Develop and document a training program and train each affected employee in the purpose and use of the alternative energy control procedures using the latch system;

3. Develop a training program and train other employees whose work operations are or may be in an area where energy control procedures may be utilized. These employees will receive training about the procedure and about the prohibition relating to attempts to restart or reenergize machines or equipment that are locked out;

4. Ensure that each authorized employee, affected employee, and other employees have effective and documented training in the contents and conditions covered by this permanent variance and interim order; and

5. Ensure that only trained and authorized employees perform energy control procedures for the task of performing cleaning of the laser cell at Gestamp's facility.

I. Inspections, Tests, and Accident Prevention

Gestamp must develop and implement a detailed program for completing inspections, tests, program evaluations, and incident prevention. Gestamp must:

1. Ensure that a competent person (authorized employee) conducts daily visual checks and monthly inspections and functionality tests of the laser cell components and configuration or operation and energy control procedures that ensure that the procedure and conditions of this permanent variance and interim order are being followed;

2. Ensure that a competent person conducts weekly inspections of the work areas associated with the cleaning of the laser cell;

3. Develop a set of checklists to be used by a competent person in conducting weekly inspections of the energy control procedures used while performing cleaning activities at the laser cell;

4. Remove from service any equipment that constitutes a safety hazard until Gestamp corrects the hazardous condition and has the correction approved by a qualified person; and

5. Maintain records of all tests and inspections of the laser cell, as well as associated corrective actions and repairs, at the job site for the duration of the variance. The maintenance, servicing, and installation of replacement parts must strictly follow the manufacturer's specifications,

instructions, and limitations, when that information is available.

J. Recordkeeping

In addition to completing OSHA's Form 301 Injury and Illness Incident Report and OSHA's Form 300 Log of Work-Related Injuries and Illnesses in the case of injuries that result from cleaning the laser cell, Gestamp must maintain records of all tests and inspections of the energy control procedures, as well as associated hazardous condition corrective actions and repairs.

K. Notifications

To assist OSHA in administering the conditions specified herein, Gestamp must:

1. Notify all affected employees of this permanent variance by the same means required to inform them of the application for a variance.

2. Notify the OTPCA and the Charleston, West Virginia, Area Office of any recordable injury, illness, or fatality (by submitting the completed OSHA Form 301 Injuries and Illness Incident Report) resulting from implementing the alternative energy control procedures of the permanent variance conditions while performing the task of cleaning of the laser cell, in accordance with 29 CFR 1904. Gestamp shall provide the notification within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; and a copy of the incident investigation (OSHA Form 301 Injuries and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality. In addition to the information required by OSHA Form 301 Injuries and Illness Incident Report, the incident investigation report must include a root-cause determination and the preventive and corrective actions identified and implemented.

3. Provide certification to the Charleston, West Virginia, Area Office within 15 working days of any incident that Gestamp informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

4. Obtain OSHA's approval prior to implementing any changes to the energy control operations that affects Gestamp's ability to comply with the conditions of this permanent variance.

5. Provide OTPCA and the Charleston, West Virginia, Area Office, by January 31 at the beginning of each calendar year, with a report evaluating the effectiveness of the alternative energy control procedures in the previous calendar year.

6. Notify OTPCA and the Charleston, West Virginia, Area Office as soon as possible, but no later than seven (7) days after it has knowledge, that it will:

(i) Cease doing business;

(ii) Have a new address or location for the main office, or

(iii) Transfer the operations specified herein to a successor company; however, this permanent variance cannot be transferred to a successor company without OSHA approval.

VI. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, 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. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on February 23, 2021.

Amanda L. Edens,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–04240 Filed 3–1–21; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Request for Comments on LSC's Draft 2021–2024 Strategic Plan

AGENCY: Legal Services Corporation.

ACTION: Request for comments.

SUMMARY: The Legal Services Corporation (''LSC'') Board of Directors (''Board'') is seeking comments on its draft 2021–2024 LSC Strategic Plan. The LSC Board previously sought comments on its 2017–2020 Strategic Plan, including comments on whether the existing goals and initiatives are appropriate and whether new goals or initiatives should be added or substituted. After receiving comments and recommendations from stakeholders, LSC now solicits comments on the proposed revisions to the Plan for 2021–2024.

DATES: All comments and recommendations must be received on or before the close of business on April 1, 2021.

ADDRESSES: You may submit comments by email to *LSCStrategicPlan@lsc.gov;* cc: Rebecca Fertig Cohen, Chief of Staff and Corporate Secretary, *cohenr@lsc.gov.*

Instructions: All comments should be addressed to Rebecca Fertig Cohen, Chief of Staff, Legal Services Corporation. Include ''Comments on LSC's Draft 2021–2024 Strategic Plan'' as the heading or subject line for all comments submitted.

FOR FURTHER INFORMATION CONTACT: Rebecca Fertig Cohen, *cohenr@lsc.gov,* (202) 295–1576.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (''LSC'') Board of Directors (''Board'') is is seeking comments on LSC's draft 2021–2024 LSC Strategic Plan. The LSC Board previously sought comments on its 2017–2020 Plan, including comments on whether the existing goals and initiatives were appropriate and whether new goals or initiatives should be added or substituted. After receiving comments and recommendations from stakeholders, LSC now solicits comments on the proposed revisions to the Plan for 2021–2024.

Based on the feedback provided by stakeholders, LSC proposes to continue working on the three goals identified in the 2017–2020 Strategic Plan over the next four years with only minor changes in focus. The three goals in the draft 2021–2024 strategic plan are:

1. Maximize the availability, quality, and effectiveness of the services its grantees provide to eligible low-income individuals by working with grantees to improve their organizational and operational capacity.

2. Expand LSC's role as a convener and leading voice for access to justice and increased civil legal services for eligible persons living in poverty in the United States.

3. Achieve the highest standards of management, business operations, and fiscal responsibility.

The full draft 2021–2024 Strategic Plan is available at *https://lsc-live.box.com/s/6rhxhm2zhrtvbh4k1pgpux5ujhggvueq.*

Dated: February 23, 2021.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2021–04204 Filed 3–1–21; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[21–014]

Name of Information Collection: NASA STEM Gateway System Internship Outcome Assessment

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—New Information Collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by April 1, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA STEM Gateway (NASA's universal registration and data management system) is a comprehensive tool designed to allow learners (*i.e.,* students and educators) to apply to NASA STEM engagement opportunities (*e.g.,* internships, fellowships, challenges, educator professional development, experiential learning activities, etc.) in a single location. NASA personnel manage the selection of applicants and implementation of engagement opportunities within the Universal Registration and Data Management System. Additionally, NASA can deploy an evaluation survey to collect short- and intermediate-outcome data by surveying learners (*i.e.,* students) in the NASA Internship Program. Results from evaluation survey information collected will be used by the NASA Office of STEM Engagement (OSTEM) to establish better defined goals, outcomes, and standards for measuring progress and also to evaluate the outcomes of NASA's Internship Program. This process of improvement will enhance NASA's strategic planning, performance planning, and performance reporting efforts as required by the GPRA Modernization Act of 2010 and Evidence-Based Policymaking Act of 2018.

II. Methods of Collection

Online/Web-based.

III. Data

Title: NASA Universal Registration and Data Management System.

OMB Number:

Type of review: New Collection.

Affected Public: Eligible students or educators, who may voluntarily complete an evaluation survey as a result of applying to or participating in a STEM engagement opportunity (*e.g.,* challenges, educator professional development, experiential learning activities, etc.).

Estimated Number of Respondents: 2,100.

Annual Responses: 2,100.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 700.

Estimated Total Annual Cost: $12,200.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2021–04239 Filed 3–1–21; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[21–013]

Name of Information Collection: Term and Condition Notification of Harassment Form

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by May 3, 2021.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 202–358–2375.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *claire.a.little@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports NASA's term and condition regarding sexual harassment, other forms of harassment, and sexual assault. This term and condition requires recipient organizations to report to NASA any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding a NASA funded Principle Investigator (PI) or Co-Investigator (Co-I). The new term and condition will also require the recipient to report to NASA if the PI or Co-I is placed on administrative leave or if the recipient has imposed any administrative action on the PI or Co-I, or any determination or an investigation of an alleged violation of the recipient's policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

In reviewing harassment notifications pursuant to the term and condition, it will be necessary for the Agency to have complete information provided in a consistent manner. The information provided will be used by the Agency to assess the matters reported and to consult with the Authorized Organizational Representative (AOR), or designee of the reporting institution. Based on the results of this review and consultation, NASA may, if necessary, assert its programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any co-PI, reduce the award funding amount, or where neither of

those previous options is available or adequate, to suspend or terminate the award.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Term and Condition Notification of Harassment Form.
OMB Number:
Type of review: New.
Affected Public: NASA grant recipient institution reporting officials.
Estimated Annual Number of Activities: 20.
Estimated Number of Respondents per Activity: 1.
Annual Responses: 20.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 20.
Estimated Total Annual Cost: $2,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2021–04238 Filed 3–1–21; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Engineering Research Centers

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. NSF will publish periodic summaries of the proposed projects.

DATES: Written comments on this notice must be received by May 3, 2021, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title of Collection: Grantee Reporting Requirements for the Engineering Research Centers (ERCs).

OMB Number: 3145–0220.

Expiration Date of Approval: August 31, 2021.

Type of Request: Intent to seek approval to renew an information collection.

Abstract:

Proposed Project

The Engineering Research Centers (ERC) program supports an integrated, interdisciplinary research environment to advance fundamental engineering knowledge and engineered systems; educate a globally competitive and diverse engineering workforce from K–12 on; and join academe and industry in partnership to achieve these goals. ERCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

ERCs conduct world-class research with an engineered systems perspective that integrates materials, devices, processes, components, control algorithms and/or other enabling elements to perform a well-defined function. These systems provide a unique academic research and education experience that involves integrative complexity and technological realization. The complexity of the systems perspective includes the factors associated with its use in industry, society/environment, or the human body.

ERCs enable and foster excellent education, integrate research and education, speed knowledge/technology transfer through partnerships between academe and industry, and prepare a more competitive future workforce. ERCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers are required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, ERCs also are required to submit management and performance indicators annually to NSF via a data collection website that is managed by a technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of cash and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the ERC effort. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Vision and impact, (2) strategic plan, (3) research program, (4) innovation ecosystem and industrial collaboration, (5) education, (6) infrastructure (leadership, management, facilities, diversity) and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, progress toward center goals, problems the Center has encountered in

making progress towards goals and how they were overcome, plans for the future and anticipated research and other barriers to overcome in the following year, and specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued ERC program maintenance and growth.

Estimate of Burden: 150 hours per center for 17 centers for a total of 2550 hours.

Respondents: Academic institutions.

Estimated Number of Responses per Report: One from each of the 17 ERCs.

Dated: February 24, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–04223 Filed 3–1–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 1, 8, 15, 22, 29, April 5, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of March 1, 2021

There are no meetings scheduled for the week of March 1, 2021.

Week of March 8, 2021—Tentative

There are no meetings scheduled for the week of March 8, 2021.

Week of March 15, 2021—Tentative

There are no meetings scheduled for the week of March 15, 2021.

Week of March 22, 2021—Tentative

There are no meetings scheduled for the week of March 22, 2021.

Week of March 29, 2021—Tentative

There are no meetings scheduled for the week of March 29, 2021.

Week of April 5, 2021

There are no meetings scheduled for the week of April 5, 2021.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 26, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2021–04403 Filed 2–26–21; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0121]

Information Collection: Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''

DATES: Submit comments by April 1, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0121 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0121. Please include Docket ID NRC–2020–0121 in your comment submission.
- *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML20345A071 and ML20345A072, respectively.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's

Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0121 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 in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 9, 2020 (85 FR 71356).

1. *The title of the information collection:* Part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High- Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''

2. *OMB approval number:* 3150–0132.

3. *Type of submission:* Revision.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* Required reports are collected and evaluated on a continuing basis as events occur; submittal of reports varies from less than one per year under some rule sections to up to an average of about 80 per year under other rule sections. Applications for new licenses, certificates of compliance (CoCs), and amendments may be submitted at any time; applications for renewal of licenses are required every 40 years for an Independent Spent Fuel Storage Installation (ISFSI) or CoC effective May 21, 2011, and every 40 years for a Monitored Retrievable Storage (MRS) facility.

6. *Who will be required or asked to respond:* Certificate holders and applicants for a CoC for spent fuel storage casks; licensees and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI; and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

7. *The estimated number of annual responses:* 868 (628 reporting responses + 154 third-party disclosure responses + 86 recordkeepers).

8. *The estimated number of annual respondents:* 86.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 80,221 hours (33,712 reporting + 43,657 recordkeeping + 2,852 third party disclosure).

10. *Abstract:* 10 CFR part 72, establishes mandatory requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, as well as requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials in an MRS. The information in the applications, reports, and records is used by NRC to make licensing and other regulatory determinations.

Dated: February 24, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–04202 Filed 3–1–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: March 5, 2021, at 1:00 p.m.

PLACE: Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Strategic Issues.
2. Financial Issues.
3. Compensation and Personnel Matters.
4. Administrative Items.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Katherine Sigler,

Assistant Secretary.

[FR Doc. 2021–04358 Filed 2–26–21; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91200; File No. SR–EMERALD–2021–07]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers

February 24, 2021.

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 February 16, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) Adopt Port fees; (2) increase the Exchange's network connectivity fees for its 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members [3] and non-Members (collectively, the ''Proposed Access Fees''); and (3) increase the number of Additional Limited Service MIAX Emerald Express Interface (''MEI'') [4] Ports available to Market Makers.[5]

On September 15, 2020, the Exchange issued a Regulatory Circular which announced, among other things, that the Exchange would adopt Port fees, thereby terminating the Waiver Period [6] for such fees, and increase the fees for its 10Gb ULL connection for Members and non-Members, beginning October 1, 2020.[7] On January 14, 2021, the Exchange announced that it would offer Market Makers the ability to purchase an additional six Limited Service MEI Ports,[8] without changing the Limited Service MEI Port fee amount.

The Exchange initially filed its proposal to adopt certain Port fees and increase the fees for its 10Gb ULL connection on October 1, 2020.[9] The First Proposed Rule Change was published for comment in the **Federal Register** on October 20, 2020.[10] The Exchange notes that the First Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the First Proposed Rule Change on November 25, 2020 [11] and resubmitted a replacement proposal.[12] The Second Proposed Rule Change was published for comment in the **Federal Register** on December 14, 2020.[13] The Exchange notes that the Second Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on January 22, 2021 [14] and resubmitted a replacement proposal.[15] The Third Proposed Rule Change was published for comment in the **Federal Register** on February 5, 2021.[16] The Exchange withdrew the Third Proposed Rule Change on February 16, 2021 and resubmitted this proposal, including the proposal to offer six Additional Limited Service MEI Ports available to Market Makers.

Port Fees

The Exchange proposes to adopt fees for ''Ports'', which are used by Members and non-Members to access the Exchange. MIAX Emerald provides four Port types: (i) The Financial Information Exchange (''FIX'') Port,[17] which allows Members to electronically send orders in all products traded on the Exchange; (ii) the MEI Port, which allows Market Makers to submit electronic orders and quotes to the Exchange; (iii) the Clearing Trade Drop Port (''CTD'') Port,[18] which

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] MIAX Emerald Express Interface is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[5] ''Market Maker'' refers to ''Lead Market Maker'' (''LMM''), ''Primary Lead Market Maker'' (''PLMM'') and ''Registered Market Maker'' (''RMM''), collectively. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[6] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[7] *See* MIAX Emerald Regulatory Circular 2020–41 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.*

[8] *See https://www.miaxoptions.com/alerts/2021/01/14/miax-emerald-options-announce-support-additional-mei-limited-service-ports.* In a subsequent alert, the Exchange announced that the six Additional Limited Service MEI Ports would be available beginning February 16, 2021, pending filing with the Commission.

[9] *See* Securities Exchange Act Release No. 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12) (the ''First Proposed Rule Change'').

[10] *See id.*

[11] *See* Comment Letter from Joseph Ferraro, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange would withdraw the First Proposed Rule Change.

[12] *See* Securities Exchange Act Release No. 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17) (the ''Second Proposed Rule Change'').

[13] *See id.*

[14] *See* Comment Letter from Joseph Ferraro, SVP, Deputy General Counsel, the Exchange, dated January 15, 2021, notifying the Commission that the Exchange would withdraw the Second Proposed Rule Change.

[15] *See* Securities Exchange Act Release No. 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02) (the ''Third Proposed Rule Change'').

[16] *See id.*

[17] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[18] ''CTD Port'' or ''Clearing Trade Drop Port'' provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v)

provides real-time trade clearing information to the participants to a trade on MIAX Emerald and to the participants' respective clearing firms; and (iv) the FIX Drop Copy (''FXD'') Port,[19] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an Electronic Exchange Member (''EEM'') [20] to receive such messages. The Exchange also proposes to increase the monthly fee for each Additional Limited Service MEI Port per matching engine for Market Makers, as described below.

Since the launch of the Exchange, all Port fees have been waived by the Exchange in order to incentivize market participants to connect to the Exchange, except for Additional Limited Service MEI Ports. However, also at launch, the Exchange introduced the structure of Port fees on its Fee Schedule (without proposing the actual fee amounts), in order to indicate to market participants that Port fees would ultimately apply upon expiration of the Waiver Period. The Exchange now proposes to assess monthly Port fees for Members and non-Members in each month the market participant is credentialed to use a Port in the production environment and based upon the number of credentialed Ports that a user is entitled to use. MIAX Emerald has Primary and Secondary Facilities and a Disaster Recovery Facility. Each type of Port provides access to all Exchange facilities for a single fee. The Exchange notes that, unless otherwise specifically set forth in the Fee Schedule, the Port fees include the information communicated through the Port. That is, unless otherwise specifically set forth in the Fee Schedule, there is no additional charge for the information that is communicated through the Port apart from what the user is assessed for each Port.[21]

FIX Port Fees

Since the launch of the Exchange, fees for FIX Ports have been waived for the Waiver Period. The Exchange now proposes to assess a monthly FIX Port fee to Members in each month the Member is credentialed to use a FIX Port in the production environment and based upon the number of credentialed FIX Ports, as follows: $550 for the first FIX Port; $350 for FIX Ports two through five; and $150 for each FIX Port over five.

Below is the proposed table showing the FIX Port fees:

FIX Port fees	MIAX Emerald monthly Port Fees includes connectivity to the Primary, Secondary and Disaster Recovery data centers
1st FIX Port	$550.00
FIX Ports 2 through 5	350.00
Additional FIX Ports over 5	150.00

MEI Port Fees

MIAX Emerald offers different options of MEI Ports depending on the services required by Market Makers. Since the launch of the Exchange, fees for MEI Ports have been waived for the Waiver Period. The Exchange now proposes to assess monthly MEI Port Fees to Market Makers based upon the number of classes or class volume accessed by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports [22] and two (2) Limited Service MEI Ports [23] per Matching Engine [24] to which they connect. The Full Service MEI Ports, Limited Service MEI Ports and the Additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center.

Specifically, the Exchange proposes to adopt MEI Port fees assessable to Market Makers based upon the number of classes or class volume accessed by the Market Maker. The Exchange proposes to adopt the following MEI Port fees: (i) $5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (ii) $10,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (iii) $14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (iv) $17,500 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (v) $20,500 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald.

The Exchange also proposes to adopt new footnote ''■'' for its MEI Port fees that will apply to the Market Makers who fall within the following MEI Port fee levels, which represent the 4th and 5th levels of the fee table: Market Makers who have (i) Assignments in up to 100 option classes or up to 50% of option classes by volume and (ii) Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald. Specifically, the Exchange proposes for these monthly MEI Port tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

The purpose of this proposed lower monthly MEI Port fee is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fixed cost. The Exchange notes that other options exchanges assess certain of their fees at different rates, based upon a member's

Exchange MPID for each side of the transaction, including Clearing Member MPID. *See* the Definitions Section of the Fee Schedule.

[19] The FIX Drop Copy (''FXD'') Port is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section 5)d)iv).

[20] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[21] An example of one such exception where there is an additional charge for information that is communicated through a Port is for certain market data products, such as ToM, AIS, and MOR, that are received via a direct connection to the Exchange. *See* Sections 6a)–c) of the Fee Schedule.

[22] *See supra* note 4.

[23] *See id.*

[24] A ''matching engine'' is a part of the MIAX Emerald electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* the Definitions Section of the Fee Schedule.

participation on that exchange,[25] and, as such, this concept is not novel. The proposed changes to the MEI Port fees for Market Makers who fall within the 4th and 5th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

For the calculation of the monthly MEI Port Fees that apply to Market Makers, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter.[26] Newly listed option classes are excluded from the calculation of the monthly MEI Port Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange proposes to assess Market Makers the monthly MEI Port Fees based on the greatest number of classes listed on MIAX Emerald that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

The Exchange currently charges $50 per month for each Additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports. The Full Service MEI Ports, Limited Service MEI Ports and the Additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center. Currently, footnote ''*'' in the MEI Port Fee table provides that the fees for Additional Limited Service MEI Ports are not subject to the Waiver Period. Accordingly, in connection with this proposal, the Exchange proposes to delete footnote ''*'' since the Exchange proposes to begin assessing MEI Port fees, which will no longer be subject to the Waiver Period. The Exchange also proposes to increase the monthly fee from $50 to $100 for each Additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports.

Below is the proposed table showing the MEI Port fees:

Monthly MIAX Emerald MEI fees	Market Maker assignments (the lesser of the applicable measurements below)	
	Per class	Percent of national average daily volume
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume.
$10,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
$14,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
$17,500.00■	Up to 100 Classes	Up to 50% of Classes by volume
$20,500.00■	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX Emerald.

■ For these Monthly MIAX Emerald MEI Port tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

The Exchange also proposes to offer six (6) Additional Limited Service MEI Ports to Market Makers. Currently, Market Makers are limited to six Additional Limited Service MEI Ports per Matching Engine, for a total of eight per Matching Engine. The Exchange originally provided Limited Service MEI Ports to enhance the MEI Port connectivity available to Market Makers. Limited Service MEI Ports have been well received by Market Makers since the Exchange launched operations in March of 2019. The Exchange now proposes to offer to Market Makers the ability to purchase an additional six (6) Limited Service MEI Ports per Matching Engine over and above the current six (6) Additional Limited Service MEI Ports per Matching Engine that are available for purchase by Market Makers. The Exchange proposes to make a corresponding change to Section 5)d)ii) of the Fee Schedule to specify that Market Makers will now be limited to purchasing twelve (12) Additional Limited Service MEI Ports per Matching Engine, for a total of fourteen (14) per Matching Engine.

The Exchange proposes to increase the number of Additional Limited Service MEI Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment. The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Pearl, LLC (''MIAX Pearl''), recently filed similar proposals to increase the number of Additional Limited Service Ports available for purchase due to similar network expansions and customer demand.[27]

Currently, the Exchange has 6 network switches that support the entire customer base of MIAX Emerald. The Exchange plans to increase this to 12 switches, which will increase the number of available customer ports by 100%. The proposed increase in the number of available customer ports will enable the Exchange to continue to

[25] *See, e.g.,* Cboe BZX Options Exchange (''BZX Options'') assesses the Participant Fee, which is a membership fee, according to a member's ADV. *See* Cboe BZX Options Exchange Fee Schedule under ''Membership Fees''. The Participant Fee is $500 if the member ADV is less than 5000 contracts and $1,000 if the member ADV is equal to or greater than 5000 contracts.

[26] The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the MEI Port Fee for a given month:

Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned]/[total national volume in classes listed on MIAX in the prior calendar quarter].

[27] *See* Securities Exchange Act Release Nos. 90811 (December 29, 2020), 86 FR 344 (January 5, 2021) (SR–MIAX–2020–41) and 90812 (December 29, 2020), 86 FR 338 (January 5, 2021) (SR–PEARL–2020–35).

provide sufficient and equal access to the MIAX Emerald System to all Members. Absent the proposed increase in available MEI Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs.

Purge Port Fees

The Exchange also offers Market Makers the ability to request and be allocated two (2) Purge Ports [28] per Matching Engine to which it connects. Purge Ports provide Market Makers with the ability to send quote purge messages to the MIAX Emerald System. Purge Ports are not capable of sending or receiving any other type of messages or information. Since the launch of the Exchange, fees for Purge Ports have been waived for the Waiver Period. The Exchange now proposes to amend its Fee Schedule to adopt fees for Purge Ports. For each month in which the MIAX Emerald Market Maker has been credentialed to use Purge Ports in the production environment and has been assigned to quote in at least one class, the Exchange proposes to assess the MIAX Emerald Market Maker a flat fee $1,500, regardless of the number of Purge Ports allocated to the MIAX Emerald Market Maker.

CTD Port Fees

The Exchange proposes to assess a CTD Port fee as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to the proposed CTD Port Fees.[29] Since the launch of the Exchange, CTD Port Fees have been waived for the Waiver Period. CTD provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. The Exchange proposes to assess a CTD Port fee of $450 per month.

Below is the proposed table for the CTD Port fees:

Description	Monthly fee
Real-Time CTD Information	$450.00

FXD Port Fee

The Exchange proposes to assess an FXD Port Fee as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to FXD Port Fees.[30] Since the launch of the Exchange, FXD Port Fees have been waived for the Waiver Period. FXD is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. The Exchange proposes to assess an FXD Port fee of $500 per month. Below is the proposed table for the FXD Port fees:

Description	MIAX Emerald monthly Port Fees includes connectivity to the Primary, Secondary and Disaster Recovery data centers
FIX Drop Copy Port	$500.00

10Gb ULL Connectivity Fee

The Exchange proposes to amend Sections 5a) and b) of the Fee Schedule to increase the monthly network connectivity fees for the 10Gb ULL fiber connection, which is charged to both Members and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange offers to both Members and non-Members two bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange now proposes to increase its monthly network connectivity fee for its 10Gb ULL connection to $10,000 for Members and non-Members.

* * * * *

MIAX Emerald believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. MIAX Emerald believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. MIAX Emerald deems Port fees and Connectivity fees to be access fees, and that Ports and Connectivity are inextricably linked components of the network. Accordingly, the Exchange believes that it is reasonable and appropriate that the costs and revenues for both should be considered together, as the services associated with connectivity and ports are linked pieces of the network's infrastructure, both of which are necessary for a market participant to access and use the trading System of the Exchange. Finally, both Connectivity fee and Port fee revenue are consolidated into a single line item (''Access Fees'') on the Exchange's financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs to provide access to the Exchange's network and reasonable business needs. Accordingly, the Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs associated with providing the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the

[28] ''Purge Ports'' provide Market Makers with the ability to send quote purge messages to the MIAX Emerald System. Purge Ports are not capable of sending or receiving any other type of messages or information. *See* the Definitions Section of the Fee Schedule.

[29] *See* Nasdaq PHLX Pricing Schedule, Options 7, Section 9, Other Member Fees, B. Port Fees.

[30] *Id.*

Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the services included in the Proposed Access Fees. The sum of all such portions of expenses represents the total cost of the Exchange to provide the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with providing the Proposed Access Fees, the Exchange analyzed the number of Members and non-Members currently utilizing the Exchange's services associated with the Proposed Access Fees, and, utilizing a recent monthly billing cycle representative of 2020 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved through reaching certain tiers, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline.

The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2019. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2019 or for the first three quarters of 2020, the Exchange believes its 2019 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[31] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[32] On December 20, 2019, the Exchange adopted Connectivity Fees in a filing utilizing a cost-based justification framework that is substantially similar to the cost-based justification framework utilized for the instant Proposed Access Fees.[33] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they do not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange to establish Connectivity Fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act.

The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[34] in general, and furthers the objectives of Section 6(b)(4) of the Act[35] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[36] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange launched trading on March 1, 2019. For the month of December 2020, the Exchange had a market share of only approximately 3.58% of the U.S. options industry.[37] The Exchange is not aware of any evidence that a market share of approximately 3.6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections to an exchange (or not connect to an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to connect to such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[38] The R2G Letter stated, ''[w]hen BOX instituted a

[31] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[32] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[33] *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 84 FR 738 (January 7, 2020) (SR–EMERALD–2019–39).

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(4).

[36] 15 U.S.C. 78f(b)(5).

[37] *See* The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

[38] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

$10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' [39] Since the Exchange issued its notice for the Proposed Access Fees, one Member discontinued the use of the Exchange's connectivity and port services as a result of the Proposed Access Fees. Accordingly, these examples show that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market participants can choose to disconnect from such exchange.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will not result in excessive or supra-competitive profit. The costs associated with providing access to Exchange Members and non-Members, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year, and are projected to increase year-over-year in the future. In particular, the Exchange has experienced a material increase in its costs in 2020, in connection with a project to make its network environment more transparent and deterministic, based on customer demand. This project will allow the Exchange to enhance its network architecture with the intent of ensuring a best-in-class, transparent and deterministic trading system while maintaining its industry leading latency and throughput capabilities. In order to provide this greater amount of transparency and higher determinism, MIAX Emerald has made significant capital expenditures (''CapEx''), incurred increased ongoing operational expenditures (''OpEx''), and undertaken additional engineering research and development (''R&D'') in the following areas: (i) Implementing an improved network design to ensure the minimum latency between multicast market data signals disseminated by the Exchange across the extranet switches, improving the unicast jitter profile to reduce the occurrence of message sequence inversions from Members to the Exchange quoting gateway processors, and introducing a new optical fiber network infrastructure that ensures the optical fiber path for participants within extremely tight tolerances; (ii) introducing a re-architected and engineered participant quoting gateway that ensures the delivery of messages to the match engine with absolute determinism, eliminating the message processing inversions that can occur with messages received nanoseconds apart; and (iii) designing an improved monitoring platform to better measure the performance of the network and systems at extremely tight tolerances and to provide Members with reporting on the performance of their systems. The CapEx associated with only phase 1 of this project in 2020 was approximately $1.85 million. This expense does not include the significant increase in employee time and other resources necessary to maintain and service this network, which expense is captured in the operating expense discussed below. This project, which results in a material increase in expense of the Exchange, is a primary driver for the increase in network connectivity fees proposed by the Exchange.

The Exchange believes the proposed increase to the 10Gb ULL connection is an equitable allocation of reasonable fees because 10Gb ULL purchasers: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. Further, the Exchange believes the Proposed Access Fees are equitably allocated because of customer demand for an even more transparent and deterministic network, as described above, which has resulted in higher CapEx, increasingly higher OpEx, and increased costs to engineering R&D. The Proposed Access Fees are equitably allocated in this regard because the majority of customer demand is coming from purchasers of the 10Gb ULL connections, which Member and non-Member firms transact the vast majority of volume on the Exchange. Accordingly, the Exchange believes it is reasonable, equitably allocated and not unfairly discriminatory to recoup the majority of its costs associated with the project to make the network more transparent and deterministic from market participants utilizing 10Gb ULL connections on the Exchange.

The Exchange believes that the proposed increase to the 10Gb ULL fees are equitably allocated among users of the network connectivity alternatives, as the users of the 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 3 billion total messages. Of those, users of the 10Gb ULL connections generate approximately 3 billion messages, and users of the 1Gb connections generate 500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 98% of the volume on the Exchange for the month of October 2020. This overall volume percentage (98% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (99% of total Exchange connectivity revenue). For example, utilizing a recent billing cycle, Exchange Members and non-Members that purchased 10Gb ULL connections accounted for approximately 99% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and (ii) Members and non-Members that purchased 1Gb connections accounted

[39] *See id.*

for approximately 1% of the revenue collected by the Exchange from all connectivity alternatives.

The Exchange further believes that the increased fee for the 10Gb ULL connection is an equitable allocation of reasonable fees as the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb ULL network connection. Pursuant to its extensive cost review described above and in connection with the Exchange's new project to increase transparency and determinism, the Exchange believes that the average cost to provide a 10Gb ULL network connection is approximately 8 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb ULL connection are not 8 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb ULL connection which cause it to be 8 times more costly to provide than the 1Gb connection. Accordingly, the Exchange believes it is equitable to allocate those network infrastructure costs that accompany a 10Gb ULL connection to the purchasers of those connections, and not to purchasers of 1Gb connections.

The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of R&D effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new 10Gb ULL connections and Ports require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. Further, as the total number of all connections and Ports increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX Emerald and its affiliates is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset the costs to the Exchange associated with providing access to its network infrastructure.

Further, because the costs of operating its own data center are significant and not economically feasible for the Exchange at this time, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that other competing exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. The Proposed Access Fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

The Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Additionally, certain Exchange-developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset those costs through the Proposed Access Fees. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the Proposed Access Fees that must be charged to access it, in order to recover those costs.

The Exchange believes it is reasonable to consider the expense and revenue for ports and connectivity alternatives together because ports and connectivity are inextricably linked components of the network infrastructure, and that both are necessary for a market participant to access the Exchange. The various types of connectivity and port alternatives that the Exchange offers provide a wide array of access alternatives necessary for a market

participant to conduct its business using the Exchange, which is a business decision to be made by each particular type of market participant. The different types of connectivity and port alternatives allows Members to conduct their different business strategies—some Members put an emphasis on speed, while others emphasize other strategies, such as redundancy and certainty of execution. The Exchange does not require a Member to have a certain framework for accessing the Exchange, but provides various connectivity and port alternatives for each Member's distinct business lines.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEI ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Market Makers have quoting and other obligations that traditional customers do not. Market Makers, therefore, need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that has to be assessed. Market Makers account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.[40] Accordingly, the Exchange believes that it is reasonable and appropriate to charge market participants more for MEI ports versus FIX ports and other lower capacity ports.

The Exchange believes that its proposal to increase the number of Additional Limited Service Ports available to Market Makers is consistent with the objectives of Section 6(b)(5) of the Act[41] because the proposed addition of Limited Service MEI Ports will be available to all Market Makers and the current fees for the Additional Limited Service MEI Ports apply equally to all Market Makers regardless of type, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange proposes to increase the number of available Limited Service MEI Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient and equal access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 6 network switches that support the entire customer base of MIAX Emerald. The Exchange plans to increase this to 12 switches, which will increase the number of available customer ports by 100%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to the MIAX Emerald System for all Members. Absent the proposed increase in available MEI Ports, the Exchange projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs. Further, the Exchange notes the decision of whether to purchase any Additional Limited Service MEI Ports is completely optional and it is a business decision for each Market Maker to determine whether Additional Limited Service MEI Ports are necessary to meet their business requirements.

The Exchange further believes that the availability of the Additional Limited Service MEI Ports is equitable and not unfairly discriminatory because it will enable Market Makers to maintain uninterrupted access to the MIAX Emerald System and consequently enhance the marketplace by helping Market Makers to better manage risk, thus preserving the integrity of the MIAX Emerald markets, all to the benefit of and protection of investors and the public as a whole. The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that voluntarily purchase Additional Limited Service MEI Ports will be charged the monthly fee per port.

As stated above, the Exchange proposes to expand its network by making available six Additional Limit Service MEI Ports due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the Additional Limited Service MEI Ports will generate. Specifically, the Exchange estimates it has already incurred a one-time cost of approximately $175,000 in capital expenditures (''CapEx'') on hardware, software, and other items to expand the network to make available the six Additional Limited Service MEI Ports. This estimated cost also includes expense associated with providing the necessary engineering and support personnel to transition those Market Makers who wish to acquire any number of Additional Limited Service MEI Ports.

The Exchange cannot be certain how many firms will purchase the Additional Limited Service MEI Ports or in what quantity. However, the Exchange projects that approximately three to four Market Makers will purchase all six of the Additional Limited Service MEI Ports, and approximately three to four firms will purchase two out of six of the Additional Limited Service MEI Ports, which will be subject to the proposed monthly fee of $100 per port. Accordingly, the Exchange projects that the monthly revenue for the Additional Limited Service MEI Ports will be approximately $33,400 (assuming four Market Makers purchase all six of the Additional Limited Service MEI Ports and four Market Makers purchase two out of six of the Additional Limited Service MEI Ports).

The Exchange only has four primary sources of revenue: Transaction fees, access fees (of which the Proposed Access Fees constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the

[40] *See supra* page 70 (discussing how purchasers of the 10Gb ULL connectivity accounted for approximately 98% of the volume on the Exchange for the month of October 2020; 99% of total Exchange connectivity revenue; Members and non-Members that purchased 10Gb ULL connections accounted for approximately 99% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and Members and non-Members that purchased 1Gb connections accounted for approximately 1% of the revenue collected by the Exchange from all connectivity alternatives).

[41] 15 U.S.C. 78f(b)(5).

total annual expense that the Exchange projects to incur in connection with providing these services versus the total annual revenue that the Exchange projects to collect in connection with providing these services. For 2020,[42] the total annual expense for providing the services associated with the Proposed Access Fees for MIAX Emerald is projected to be approximately $9.3 million. The $9.3 million in expense includes expense associated with providing all ports and all connectivity alternatives. The Exchange is unable to separate out its expense by connectivity alternative, as all connectivity alternatives are intricately combined in a single network infrastructure. Nevertheless, the Exchange attributes the majority of connectivity expense to the 10Gb ULL connections because the majority of network capacity is used by 10Gb ULL purchasers.[43] The $9.3 million in projected total annual expense is comprised of the following, all of which are directly related to the services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees. As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[44] The $9.3 million in projected total annual expense is directly related to the services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the Proposed Access Fees.

For 2020, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide the services associated with the Proposed Access Fees, is projected to be $1,932,519. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[45] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 73% of the total Equinix expense (68% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX Emerald with its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''), as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the

[42] The Exchange has not yet finalized its 2020 year end results.

[43] *See supra* note 40.

[44] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-part expense described in this filing is attributed to the same line item for the Exchange's 2020 Form 1 Amendment, which will be filed in 2021.

[45] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 66% of the total Zayo expense (62% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 94% of the total SFTI and other service providers' expense (89% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports).[46] The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 57% of the total hardware and software provider expense (54% allocated towards the cost of providing the provision of network connectivity and 3% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

For 2020, total projected internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees, is projected to be $7,367,259. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire costs contained in those items to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, MIAX Emerald's employee compensation and benefits expense relating to providing the services associated with the Proposed Access Fees is projected to be $4,489,924, which is only a portion of the $9,354,009 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 48% of the total employee compensation and benefits expense (39% allocated towards the cost of providing the provision of network connectivity and 9% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's depreciation and amortization expense relating to providing the services associated with the Proposed Access Fees is projected to be $2,630,687, which is only a portion

[46] The Exchange notes an increase to the SFTI and other service providers' expense percentage contained herein versus the same expense category percentage the Exchange used in its initial filing to adopt connectivity fees. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). This is because at the time the Exchange performed its cost analysis for the initial connectivity fee filing, the Exchange was operational for only part of the year. Since that time, the Exchange has been fully operational, increased market share and number of market participants, and undertaken significant performance upgrades, resulting in increased expense. Accordingly, the Exchange believes it is appropriate to analyze its SFTI and other service providers' expense more in line with its affiliate options exchanges, MIAX and MIAX PEARL.

of the $3,812,590 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 69% of the total depreciation and amortization expense, as these services would not be possible without relying on such equipment (65% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's occupancy expense relating to providing the services associated with the Proposed Access Fees is projected to be $246,648, which is only a portion of the $474,323 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 52% of the total occupancy expense (48% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of services associated with the Proposed Access Fees. The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on its high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees in to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards the Proposed Access Fees.

The Exchange's monthly projected revenue for the Proposed Access Fees is based on the following projected purchases by Members and non-Members, which is based on a recent billing cycle: (i) 63 10Gb ULL connections; (ii) 14 CTD Ports; (iii) 8 FXD Ports; (iv) 113 FIX Ports; (v) 352 Limited Service MEI Ports; (vi) 37 Full Service MEI Ports;[47] and (vii) 10 Purge Ports. As described above, the fee charged to each Market Maker for MEI Ports can vary from month to month depending on the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon certain class volume percentages. The Exchange also provides a further discount for a Market Maker's MEI Port fees if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month. The Exchange has at least one Member consistently quoting in the highest tier for MEI Port fees, but receiving this discount, resulting in lower revenue for the Exchange. Further, the projected revenue from FIX Port fees is subject to change from month to month depending on the number of FIX Ports purchased. Accordingly, based on current assumptions and approximations, the Exchange projects total monthly Port revenue of approximately $285,000 and total 10Gb ULL connectivity revenue of approximately $630,000. The Exchange notes that the port revenue projections are subject to change depending on the number of classes that Market Makers are quoting in and the tiers achieved. As such, the projection of $285,000 per month is not a static number and fluctuates month to month. Further, as noted above, one Member recently dropped its connections and ports as a direct result of the introduction of the Proposed Access Fees. Accordingly, reflecting that cancellation, which took effect following the recent billing cycle, the Exchange projects annualized revenue of $10.9 million from all connectivity alternatives and port types.[48]

[47] The Exchange's projections included 9 firms or their affiliates purchasing Full Service MEI Ports. Of those firms, the Exchange projects that 6 firms will achieve the highest tier in the MEI Port fee table, 2 firms will achieve the lowest tier in the MEI Port fee table, and 1 firm will achieve the middle tier in the MEI Port fee table.

[48] This $10.2 million revenue projection includes revenue from all connectivity sources, including all 10Gb ULL connections discussed above (after giving effect to the recent cancellation), two 1Gb connections (the Exchange is not increasing fees for 1Gb connections, however, those connections are included in total connectivity revenue in order to have a true comparison between all connectivity revenue and all connectivity expense), and all port types discussed above (after giving effect to the recent cancellation).

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the services associated with the Proposed Access Fees would be approximately $10.9 million per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the services associated with the Proposed Access Fees would be approximately $9.3 million per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for the providing the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 15% profit margin on the Proposed Access Fees ($10.9 million × $9.3 million = $1,600,000 per annum). This profit margin does not take into account the cost of the CapEx the Exchange projected to spend in 2020 of $1.85 million on the project to make the Exchange's network more deterministic, or the amounts the Exchange is projected to spend each year on CapEx going forward for that project. This profit margin also does not take into account the cost of the CapEx of $175,000 for adding the six Additional Limited Service MEI Ports.

For the avoidance of doubt, none of the expenses included herein relating to the services associated with the Proposed Access Fees relate to the provision of any other services offered by MIAX Emerald. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to the MIAX Emerald expenses included herein, those expenses only cover the MIAX Emerald market; expenses associated with the Exchange's affiliate exchanges, MIAX and MIAX PEARL, are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX or MIAX PEARL.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing the services associated with the Proposed Access Fees to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. The Proposed Access Fees are intended to recover the Exchange's costs of operating and supporting the network. Accordingly, the Exchange believes that the Proposed Access Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected annual revenue from the Proposed Access Fees, including the increased amount.

The Exchange also points out that it is not seeking to recoup any of its past costs associated with the provision of any Ports during the Waiver Period. The Exchange currently has 35 Members,[49] all of whom did not pay Port fees during the Waiver Period from the time these firms all became Members of the Exchange. Further, the majority of firms that are Members of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAX and MIAX PEARL Port fees. Accordingly, the Exchange (and MIAX and MIAX PEARL) have assumed approximately 100% of the costs associated with providing Ports for the majority of Member firms of the Exchange, MIAX, and MIAX PEARL during their respective Waiver Periods. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to now adopt Port fees that are reasonably related to (and designed to recover) the Exchange's cost associated with the provision of such Ports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Access Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. The Exchange had one of its member firms cancel its membership with the Exchange as a direct result of the Proposed Access Fees. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect, as described above.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses

[49] *See https://www.miaxoptions.com/exchange-members/emerald.*

significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of December 2020, the Exchange had a market share of approximately 3.58% of executed multiply-listed equity options [50] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[51] and Rule 19b–4(f)(2) [52] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2021–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2021–07 and should be submitted on or before March 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

J. Matthew DeLesDernier,

Assistant Secretary.

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[50] *See supra* note 37.

[51] 15 U.S.C. 78s(b)(3)(A)(ii).

[52] 17 CFR 240.19b–4(f)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91204; File No. SR–ICEEU–2021–004]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Clearing Rules

February 24, 2021.

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 February 17, 2021, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I and II below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to make certain amendments to its Clearing Rules (the ''Rules'') [5] relating to settlement of Euro payments through the European Union's TARGET2 payment system.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms used but not defined herein have the meanings specified in the Rules.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend Part 12 of the Rules to implement certain account and settlement finality arrangements applicable to the settlement of Euro-denominated payments by the Clearing House through the European Union (''EU'') TARGET2 payment system.[6] Effective as of January 1, 2021, upon the exit of the United Kingdom from the EU, ICE Clear Europe has been recognized as a ''tier 2'' third-country central counterparty (''TC–CCP'') [7] for purposes of the European Market Infrastructure Regulation (''EMIR'').[8] Pursuant to Article 25(2b) of EMIR, a tier 2 TC–CCP is required, as a condition to such recognition, to open an overnight deposit account with the central bank of issue of the relevant currency. ICE Clear Europe currently has accounts with the Dutch component of TARGET2 (''TARGET2–NL'') operated by De Nederlandsche Bank (''DNB''), but will not be eligible to maintain such accounts after March 31, 2021. ICE Clear Europe therefore plans to establish an account with the European Central Bank (''ECB'') component of the TARGET2 system (''TARGET2–ECB''), which both ICE Clear Europe and the ECB wish to do in compliance with, and furtherance of, EMIR. The proposed changes to Part 12 of the Rules would facilitate the establishment and use of accounts with TARGET2 (including TARGET2–ECB) [9] and address settlement finality with respect to payments made through such accounts in accordance with TARGET2 terms and conditions of operation.

Specifically, in Rule 1201, several new definitions would be added. In addition to a definition for ''TARGET2'' (referencing the real-time gross settlement system owned and operated by the Eurosystem), new definitions would be added for ''TARGET2 Component System'' (referencing the real-time gross settlement system of any central bank that is part of the TARGET2 system where the operator of such system is a Concentration Bank under the Rules), ''TARGET2 Concentration Bank'' (referencing a Concentration Bank under the Rules that is the operator of a TARGET2 Component System), ''TARGET2 PM Account'' (referencing a cash account of the Clearing House in TARGET2), and ''TARGET2 Terms and Conditions'' (referencing the terms and conditions that apply to participation in the relevant TARGET2 Component System). The definition of ''Payment Transfer Order'' would be amended to add TARGET2 Payment Transfer Orders, as discussed below. Subsequent provisions of Rule 1201 would be renumbered accordingly. It is contemplated that ICE Clear Europe's account with TARGET2–ECB would constitute a TARGET2 PM Account and that the ECB would constitute a TARGET2 Concentration Bank for purposes of these Rules as proposed to be amended.[10] ICE Clear Europe intends to designate the ECB as a Concentration Bank under the Rules for these purposes.

In Rule 1202(a), a new clause (v) would be added to provide that a Payment Transfer Order will arise and enter ICE Clear Europe's designated system at the moment ICE Clear Europe's TARGET2 PM Account is debited or credited with funds, pursuant to the Clearing House sending a SWIFT instruction to the TARGET2 Concentration Bank. Such a Payment Transfer Order would be defined as a ''TARGET2 Payment Transfer Order.'' Rule 1202(a)(iv), which addresses Payment Transfer Orders involving Clearing House bank accounts, would be amended to exclude TARGET2 Concentration Banks (which would be covered instead by the new clause (v)). Rule 1202(e)(ii), which addresses the amounts subject to a Payment Transfer Order, would be amended to cover TARGET2 Payment Transfer Orders. Rule 1202(m), which specifies the parties subject to a Payment Transfer Order, would be amended to add a new clause (iv) specifying that a TARGET2 Payment Transfer Order would have effect between the relevant TARGET2 Concentration Bank and the Clearing House. Subsequent provisions of Rule 1202(m) would be renumbered accordingly.

In Rule 1203, a new paragraph (c) would be added to provide that a TARGET2 Payment Transfer Order will become irrevocable at the earlier of (i) the moment the TARGET2 Payment Account is credited or debited or (ii) when or during the period in which any relevant payment settlement algorithm used in TARGET2 commences or is running. The approach is intended to be consistent with the point at which payment order becomes irrevocable under the TARGET2 Terms and Conditions. Subsequent provisions of Rule 1203 would be renumbered accordingly.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Clearing Rules are consistent with the requirements of Section 17A of the Act [11] and the regulations thereunder applicable to it including the standards under Rule 17Ad–22.[12] In particular, Section 17A(b)(3)(F) of the Act [13] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The amendments are intended to accommodate the Clearing House's use of TARGET2–ECB accounts (and would also apply to the Clearing House's use of TARGET2–NL accounts whilst they remain operational) for purposes of settling Euro payments through the TARGET2 system in central bank funds, consistent with the conditions of recognition for a tier 2 TC–CCP under EMIR. As such, the amendments will facilitate settlement by the Clearing House of Euro payments and provide for settlement finality of such payments in accordance with the TARGET2 Terms and Conditions. In ICE Clear Europe's view, the amendments will thus promote the prompt and accurate clearance and settlement of transactions and the protections of investors and the public interest, within

[6] TARGET2 is the real-time gross settlement system for Euro payments owned and operated by the Eurosystem (which consists of the European Central Bank and the national central banks of those countries that have adopted the Euro).

[7] See European Securities and Markets Authority (ESMA) Public Statement of 28 September 2020, available at *https://www.esma.europa.eu/press-news/esma-news/esma-recognise-three-uk-ccps-1-january-2021.*

[8] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; Commission Delegated Regulation (EU) 2020/1301 of 14 July 2020 Supplementing Regulation (EU) No 648/2012 of the European Parliament and of the council with respect to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States.

[9] For such time as the TARGET2–NL accounts remain in operation, the proposed changes to Part 12 would apply to such accounts as well.

[10] Similarly, while they remain operational, ICE Clear Europe's existing accounts with TARGET2–NL will constitute a TARGET2 PM Accounts and DNB will constitute a TARGET2 Concentration Bank. It is expected that after the TARGET2–ECB account has been opened, the TARGET2–NL account of ICE Clear Europe would be closed and DNB would cease to be a Concentration Bank.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 240.17Ad–22.

[13] 15 U.S.C. 78q–1(b)(3)(F).

the meaning of Section 17A(b)(3)(F) of the Act. (ICE Clear Europe does not believe the amendments would affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, within the meaning of that section.)

Moreover, the amendments are consistent with Rule 17Ad–22(e)(9),[14] which requires that each covered clearing agency ''conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency''. The amendments will facilitate ICE Clear Europe's opening accounts in TARGET2, and thereby permit it to conduct money settlements in Euro in central bank funds and to reduce the potential for conflicts between the rules governing ICE Clear Europe's settlement system and those governing the TARGET2 System where ICE Clear Europe holds and uses accounts in the TARGET2 System. As a result, the amendments would be consistent with the requirements of Rule 17Ad–22(e)(9).

Rule 17Ad–22(e)(8) [15] requires the covered clearing agency to ''define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.'' The amendments to Part 12 of the Rules will establish the time at which Payment Transfer Orders are effective and irrevocable for Euro payments made through the TARGET2 System. In accordance with the TARGET2 Terms and Conditions, such payments will be effected, and become final, on a real-time basis. The amendments are thus consistent with the requirements of Rule 17Ad–22(e)(8).

Rule 17Ad–22(e)(1) requires that the covered clearing agency ''provide for a well-founded, clear, transparent and enforceable legal basis for each aspects of its activities in all relevant jurisdictions.'' As discussed above, the amendments are being made to permit ICE Clear Europe to have a central bank account for Euro payments in accordance with Article 25(2b) of EMIR, as applicable to ICE Clear Europe as a tier 2 TC–CCP. The amendments are, therefore, necessary and desirable to maintain ICE Clear Europe's status as a recognized TC–CCP under EMIR. The amendments also reduce the potential for conflicts between the settlement finality rules governing ICE Clear Europe's settlement system and those governing relevant TARGET2 components. The amendments will therefore further compliance with article 5(4) of EU Regulation 153/2013, as on-shored in the United Kingdom and as applicable in the EU, which requires a CCP to ''*identify and analyse potential conflicts of law issues and develop rules and procedures to mitigate legal risk resulting from such issues*''. As a result, the amendments enhance the legal framework of the Clearing House in the UK and EU, and as such are consistent with the requirements of Rule 17Ad–22(e)(1).

(B) Clearing Agency'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. The amendments will not affect the rights or obligations of Clearing Members or the terms of cleared Contracts. The amendments are designed to facilitate establishment and use by the Clearing House of a TARGET2–ECB payment account to permit real-time settlement of Euro-based payments as between the Clearing House's own accounts, and would not affect significantly the rights of Clearing Members. As a result, ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services. As a result, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.

ICE Clear Europe has requested that the Commission waive both the five-day pre-filing requirement and the 30-day delayed operative date under Rule 19b–4(f)(6)(iii) [18] so that the proposed rule change may become effective and operative upon filing with the Commission. ICE Clear Europe has satisfied the five-day pre-filing requirement already, so the Commission only considers whether to waive the 30-day delayed operative date.

ICE Clear Europe believes that waiver of the 30-day delayed operative date is warranted because the proposed rule change would not (i) significantly affect the protection of investors or the public interest and (ii) impose any significant burden on competition.

With respect to (i), ICE Clear Europe maintains that the proposed rule change would in practice affect transfers between different bank accounts of ICE Clear Europe (including TARGET2 PM Accounts), which are not transfers involving payments to or from Clearing Members. Accordingly, ICE Clear Europe states that the proposed rule change would have no effect on the safeguarding of funds or securities in the custody or control of ICE Clear Europe, nor significantly affect any other rights or obligations of ICE Clear Europe, Clearing Members, Sponsored Principals or other persons using the clearing service. ICE Clear Europe further maintains that the proposed rule change would not affect the terms of contracts it clears or ICE Clear Europe's financial resources or risk models. As a result, ICE Clear Europe does not believe the proposed rule change would significantly affect the protection of investors or the public interest.

With respect to (ii), ICE Clear Europe maintains that the proposed rule change would not impose any new obligations on Clearing Members, affect significantly the rights of Clearing Members, or affect the cost of clearing or access to clearing for market participants. As a result, in ICE Clear Europe's view, the proposed rule change would not impose any significant burden on competition.

[14] 17 CFR 240.17Ad–22(e)(9).

[15] 17 CFR 270.17Ad–22(e)(8).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

The Commission believes that the proposed rule change would only affect transfers between different bank accounts of ICE Clear Europe (including TARGET2 PM Accounts), not transfers involving payments to or from Clearing Members. As a result, the Commission does not believe the proposed rule change would have any effect on the safeguarding of funds or securities in the custody or control of ICE Clear Europe or any other rights or obligations of ICE Clear Europe, Clearing Members, Sponsored Principals or other persons using the clearing service. Accordingly, the Commission believes the proposed rule change would not significantly affect the protection of investors or the public interest.

Moreover, the Commission believes the proposed rule change would not impose any new obligations on Clearing Members, affect significantly the rights of Clearing Members, or affect the cost of clearing or access to clearing for market participants. Accordingly, the Commission believes the proposed rule change would not impose any significant burden on competition.

Because the Commission believes the proposed rule change would not (i) significantly affect the protection of investors or the public interest and (ii) impose any significant burden on competition, the Commission believes that waiver of the 30-day operative delay would not itself significantly affect the protection of investors or the public interest and impose any significant burden on competition. Moreover, the Commission believes that the delay of the operation of the proposed rule change through the 30-day operative delay could impede ICE Clear Europe's compliance with its requirements under EMIR. As ICE Clear Europe notes, the proposed rule change would allow ICE Clear Europe to establish a TARGET2–ECB account, which is necessary in order to further compliance by ICE Clear Europe with the policy underlying Article 25(2b) of EMIR applicable to a tier 2 TC–CCP in light of the United Kingdom's exit from the European Union. ICE Clear Europe seeks to establish such an account to replace its existing TARGET2–NL account by the end of March 2021. Any delay in implementing the amendments, and establishing the TARGET2–ECB account, could affect ICE Clear Europe's ability to comply with applicable EU requirements and maintain recognition. Thus, the Commission believes that waiving the 30-day operative delay would allow ICE Clear Europe to comply with applicable EU requirements and maintain recognition, thus providing certainty to ICE Clear Europe and its Clearing Members, while not significantly affecting the protection of investors or the public interest and imposing any significant burden on competition. Therefore, the Commission designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2021–004 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–2021–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule, 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–2021–004 and should be submitted on or before March 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04221 Filed 3–1–21; 8:45 am]

BILLING CODE 8011–01–P

[19] As noted, ICE Clear Europe satisfied the five-day pre-filing requirement. For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91199; File No. SR–OCC–2021–003]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish OCC's Persistent Minimum Skin-in-the-Game

February 24, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2021, the Options Clearing Corporation (''OCC'' or ''Corporation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's Rules, Capital Management Policy, and certain other OCC policies to establish a persistent minimum level of OCC's own pre-funded financial resources (commonly referred to as ''skin-in-the-game'') that OCC would contribute to cover default

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

losses or liquidity shortfalls. Amendments to OCC's Rules are included in Exhibit 5a of filing SR–OCC–2021–003. Amendments to OCC's Capital Management Policy are included in confidential Exhibit 5b of filing SR–OCC–2021–003. OCC would also make conforming changes to the Default Management Policy, Clearing Fund Methodology Policy, and Recovery and Orderly Wind-Down Plan (''RWD Plan''), which can be found in confidential Exhibits 5c, 5d, and 5e of filing SR–OCC–2021–003, respectively, to reflect the amended default waterfall (*i.e.,* the financial resources OCC would use to address default losses and liquidity shortfalls, listed in the order OCC would utilize them). Material proposed to be added is marked by underlining, and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

OCC is proposing to amend OCC's Rules, Capital Management Policy, and certain other policies to establish a persistent minimum level of skin-in-the-game that OCC would contribute to cover default losses or liquidity shortfalls, which would consist of a minimum amount of OCC's own pre-funded resources that OCC would charge prior to charging a loss to the Clearing Fund (as defined below, the ''Minimum Corporate Contribution'') and, as OCC's Rules currently provide, applicable funds held in trust in respect to OCC's Executive Deferred Compensation Plan (''EDCP'') (such funds, as defined in OCC's Rules, being the ''EDCP Unvested Balance'') that would be charged *pari passu* with the Clearing Fund deposits of non-defaulting Clearing Members. The persistent minimum level of skin-in-the-game would establish a floor for the pre-funded resources OCC would contribute to cover default losses and liquidity shortfalls. In addition to this minimum, OCC would continue to commit its liquid net assets funded by equity (''LNAFBE'')[4] greater than 110% of its Target Capital Requirement prior to charging a loss to the Clearing Fund.

Background

In January 2020, OCC implemented its Capital Management Policy, by which OCC (a) determines the amount of Equity[5] sufficient for OCC to meet its regulatory obligations and to serve market participants and the public interest (as defined in OCC's Rules, the ''Target Capital Requirement''), (b) monitors Equity and LNAFBE levels to help ensure adequate financial resources are available to meet general business obligations; and (c) manages Equity levels, including by (i) adjusting OCC's fee schedule (as appropriate) and (ii) establishing a plan for accessing additional capital should OCC's Equity fall below certain thresholds (the ''Replenishment Plan'').[6] In addition, OCC's Rules, the Capital Management Policy, and associated policies provide for the use of OCC's current and retained earnings in excess of 110% of the Target Capital Requirement (*i.e.,* the ''Early Warning'' threshold under OCC's Replenishment Plan) to cover losses arising from a Clearing Member's default.[7] While OCC's Rules previously provided for OCC to contribute its own capital to cover default losses at the Board's discretion, the Capital Management Policy changes made the contribution of such excess capital obligatory.[8]

In the event of a Clearing Member default, OCC would contribute excess capital to cover losses remaining after applying the margin assets and Clearing Fund contribution of the defaulting Clearing Member and before charging the Clearing Fund contributions of non-defaulting Clearing Members. Should OCC's excess capital be insufficient to cover the loss, OCC also has another tranche of OCC resources in addition to the Clearing Fund; namely, the EDCP Unvested Balance.[9] In the event of a default loss, the EDCP Unvested Balance is contributed *pari passu* with the Clearing Fund contributions of non-defaulting Clearing Members.

The implementation of OCC's Capital Management Policy marked the first time OCC committed OCC's own pre-funded financial resources into OCC's approach to capital management and resiliency. In particular, OCC believes that the inclusion of the EDCP Unvested Balance is a powerful alignment of interest between management and Clearing Members. OCC takes seriously the interest of the industry and international regulators in seeing more significant skin-in-the-game commitments at central counterparties.

To that end, OCC has reviewed feedback received in connection with the initial filing of the Capital Management Plan, relevant papers from industry participants and stakeholders concerning skin-in-the-game, and regulatory regimes in jurisdictions outside the United States. For one, a comment submitted in connection with the Capital Management Policy's filing urged OCC to implement a ''minimum amount of skin-in-the-game that 'scales with risk and is defined and funded upfront' and . . . 'to define a level of [skin-in-the-game] *ex ante* that would always be readily available in case of a default loss.' ''[10] OCC has also reviewed the paper, ''A Path Forward for CCP Resilience, Recover, and Resolution,'' originally released in October 2019 with nine signatories and re-released in March of 2020 with ten additional signatories, representing major buy-side and sell-side firms in the markets OCC serves.[11] One of the paper's significant

[3] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[4] International standards and the Commission's Rules established minimum LNAFBE requirements for financial market infrastructures and covered clearing agencies, respectively. See CPSS–IOSCO, *Principles for financial market infrastructures,* at Principle 15 (Apr. 16, 2012), available at *http://www.bis.org/publ/cpss101a.pdf;* 17 CFR 240.17Ad–22(e)(15). The Capital Management Policy defines ''LNAFBE'' as the level of cash and cash equivalents, no greater than Equity, less any approved adjustments (*i.e.,* agency-related liabilities such as Section 31 fees held by OCC).

[5] The Capital Management Policy defines ''Equity'' as shareholders' equity as shown on OCC's Statement of Financial Condition.

[6] *See* Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (File No. SR–OCC–2019–007) (hereinafter, ''Order Approving Capital Management Policy'').

[7] *Id.* at 5502.

[8] Use of excess capital to cover losses arising from the default of a bank or other clearing agency that is not otherwise associated with a Clearing Member default remains at the Board's discretion. *See* Rule 1006(e)(ii).

[9] As defined in OCC's Rules, the EDCP Unvested Balance consists of funds (x) deposited on or after January 1, 2020 in respect of its EDCP and (y) in excess of amounts necessary to pay for benefits accrued and vested under the EDCP at such time.

[10] Order Approving Capital Management Policy, 85 FR at 5507 (quoting comments submitted by FIA).

[11] *See* ABN AMRO Clearing Bank N.V., et al., A Path Forward for CCP Resilience, Recovery, and Resolution (March 10, 2020), *available at https://*

recommendations is that central counterparties should have skin-in-the-game in a more defined manner.[12] In contrast, OCC's current variable approach to skin-in-the-game does not guarantee a defined amount would be available as skin-in-the-game. Additionally, as OCC seeks recognition in the European Union and the United Kingdom, OCC is cognizant of the European Market Infrastructure Regulation's (''EMIR'') expectation that skin-in-the-game be a minimum of 25% of the central counterparty's regulatory capital requirement.[13] Under the current Capital Management Policy, excess capital is not dedicated solely as skin-in-the-game and it is possible that OCC's capital in excess of 110% of its Target Capital Requirement would be less than 25% of OCC's Target Capital Requirement.

To address the concerns raised by these market participants, further strengthen OCC's pre-funded financial resources, further align the interests of OCC's management and Clearing Members, and align OCC's skin-in-the-game with international standards, OCC is filing this proposed rule change, which would establish a persistent minimum amount of skin-in-the-game that would be used to cover default losses and liquidity shortfalls. This skin-in-the-game proposal is part of a broader set of decisions announced by OCC to lower the cost of clearing for its members,[14] including a fee decrease effective September 1, 2020.[15] OCC also discussed these changes on calls with OCC's Non-Equity Exchanges, Clearing Members, and other market participants, including discussions with the SIFMA Options Committee and FIA and open calls with OCC Clearing Members. Members expressed that the proposed addition of a minimum level of skin-in-the-game would be a welcome enhancement by OCC. One market participant expressed its appreciation for OCC's commitment to resiliency, but renewed concerns it had raised in connection with OCC's Capital Management Policy about increases in OCC's capital and, if OCC were sold, a more commercial orientation monetized with higher fees. As OCC stated with respect to the establishment of the Capital Management Policy,[16] OCC believes that this view is well outside the scope of the Capital Management Policy and this proposed rule change, but will continue to engage with Clearing Members and other market participants to address any concerns. While questions were raised in these conversations, no specific suggestions were made.

Proposed Changes

In order to establish a persistent minimum amount of skin-in-the-game, OCC is proposing to: (a) Amend OCC's Rules to define the Minimum Corporate Contribution, insert the Minimum Corporate Contribution in OCC's default waterfall as provided in Rule 1006, provide for how OCC would calculate any LNAFBE greater than 110% of its Target Capital Requirement OCC would contribute in addition to the Minimum Corporate Contribution, and provide a time by which OCC would reestablish the Minimum Corporate Contribution if and when OCC uses it to cover default losses; (b) amend the Capital Management Policy to exclude the Minimum Corporate Contribution from OCC's measurement of its LNAFBE against its Target Capital Requirement and from OCC's calculation of the Early Warning and Trigger Event, to ensure that OCC may maintain the Minimum Corporate Contribution exclusively for default losses while retaining access to replenishment capital in the event OCC suffers an operational loss that reduces its Equity below those thresholds; and (c) apply conforming changes to the Default Management Policy, Clearing Fund Methodology Policy, and the RWD Plan to reflect that in the event of a default loss or liquidity shortfall, the Minimum Corporate Contribution would be charged after contributing the margin and Clearing Fund deposit of a default member and before the contribution of OCC's LNAFBE in excess of 110% of OCC's Target Capital Requirement, both before OCC charges the Clearing Fund deposits of non-default Clearing Members and the EDCP Unvested Balance on a pro rata basis.

(a) Amendments to OCC's Rules

To establish and maintain a persistent minimum level of skin-in-the-game, OCC proposes to amend its Rules to (1) define the Minimum Corporate Contribution; (2) revise OCC's default waterfall to more clearing define the skin-in-the-game resources OCC would contribute to a default loss; (3) provide for how OCC would calculate any LNAFBE greater than 110% of the Target Capital Requirement it would contribute after exhausting the Minimum Corporate Contribution; and (4) provide for how OCC would replenish the Minimum Corporate Contribution after each chargeable default loss.

(1) Defining the Minimum Corporate Contribution

OCC would establish a persistent minimum level of skin-in-the-game by first amending OCC's Rules to define the Minimum Corporate Contribution in Chapter I of the Rules to mean the minimum level of OCC's own funds maintained exclusively to cover credit losses or liquidity shortfalls, the level of which OCC's Board shall determine from time to time. As OCC's own funds, OCC would hold the Minimum Corporate Contribution in accordance with OCC's By-Laws governing the investment of OCC's funds[17] and OCC's policies and procedures governing cash and investment management. Specifically, OCC maintains uninvested OCC cash in demand deposits and any investments of funds maintained to satisfy the Minimum Corporate Contribution would be limited to overnight reverse repurchase agreements involving U.S. Government Treasury Securities, consistent with OCC's same-day liquidity needs for such funds.

While the proposed definition would give OCC's Board discretion in setting the Minimum Corporate Contribution,

www.jpmorgan.com/solutions/cib/markets/a-path-forward-for-ccp-resilience-recovery-and-resolution.

[12] While OCC agrees with the paper's authors that central counterparties should have meaningful skin-in-the-game, OCC does not agree with the level of skin-in-the-game recommended in the paper. *See* Optimizing Incentives, Resilience and Stability in Central Counterparty Clearing: Perspectives on CCP Issues from a Utility Model Clearinghouse (September 22, 2020), *available at https://www.theocc.com/Newsroom/Insights/2020/09-22-Optimizing-Incentives,-Resilience-and-Stabil.*

[13] Though OCC, as a non-EU central counterparty, would not be subject directly to the EMIR standards or the supervision of the European Securities and Markets Authority (''ESMA''), OCC has considered the EMIR standards as part of its bid to seek third-country recognition in Europe and the United Kingdom. OCC is seeking recognition to address European bank capital requirements set to go into effect next year that would require European banks to set aside additional capital for exposure to central counterparties that are not ''qualified CCPs'' in Europe. In order to become a qualified CCP, ESMA and the regulatory authority in a non-EU jurisdiction must reach an agreement that their regulatory regimes for central counterparties are equivalent. As of the date of this filing, the Commodity Futures Trading Commission (''CFTC'') has reached an agreement with ESMA on the equivalence of their regulatory regimes.

[14] OCC announced these decisions in a press release and letter to Clearing Members. *See* Press Release, OCC To Lower Costs for Users of U.S. Equity Derivatives Markets (Aug. 3, 2020), *available at https://www.theocc.com/Newsroom/Press-Releases/2020/08-03-OCC-To-Lower-Costs-for-Users-of-US-Equity-De;* ''Letter to Clearing Member Firms—OCC to Lower Costs for Users of U.S. Equity Derivative Markets'' (Aug. 3, 2020), *available at https://www.theocc.com/Newsroom/Views/2020/08-03-Letter-to-Clearing-Member-Firms.*

[15] *See* Exchange Act Release No. 89534 (Aug. 12, 2020), 85 FR 50858 (Aug. 18, 2020) (File No. SR–OCC–2020–009).

[16] *See* Exhibit 3g to File No. SR–OCC–2019–007.

[17] *See* OCC By-Laws Art. IX, Sec. 1.

the Board has approved an initial Minimum Corporate Contribution that sets OCC's total persistent skin-in-the-game (*i.e.,* the sum of the Minimum Corporate Contribution and OCC's current EDCP Unvested Balance) at 25% of OCC's Target Capital Requirement. In setting the initial Minimum Corporate Contribution, OCC's Board considered factors including, but not limited to, the regulatory requirements in each jurisdiction in which OCC is registered or in which OCC is actively seeking recognition, the amount similarly situated central counterparties commit of their own resources to address participant defaults, the EDCP Unvested Balance, OCC's LNAFBE greater than 110% of its Target Capital Requirement, projected revenue and expenses, and other projected capital needs.

(2) Revising OCC's Default Waterfall

OCC would also amend OCC Rule 1006 to insert the Minimum Corporate Contribution in OCC's default waterfall after contributing a defaulting Clearing Member's margin and Clearing Fund deposit, and before contributing OCC's LNAFBE greater than 110% of OCC's Target Capital Requirement, both of which OCC would exhaust before charging a loss to the Clearing Fund and the EDCP Unvested Balance, *pari passu* with the Clearing Fund deposits of non-defaulting Clearing Members. So placed, OCC believes that the Minimum Corporate Contribution would demonstrate OCC's institutional commitment to its ongoing financial surveillance of clearing members and the establishment and maintenance of a prudent and effective margin methodology. A draw against the Minimum Corporate Contribution and the associated requirement to replenish, as discussed below, would provide fewer resources to meet other corporate commitments. Accordingly, the proposal would further align OCC's and its management's interests with those of non-defaulting Clearing Members.

OCC would also remove references to ''retained earnings'' or ''current or retained earnings'' in OCC Rule 1006(b), Rule 1006(e)(i), Rule 1006(e)(ii), and the second sentence of Rule 1006(e)(iii), and replace them with references to the contribution of the ''Minimum Corporate Contribution'' and ''the Corporation's liquid net assets funded by equity that are greater than 110% of its Target Capital Requirement.'' The refences to ''retained earnings'' or ''current or retained earnings'' are legacy terms used prior to OCC's implementation of the Capital Management Policy.[18] OCC is proposing to replace these references in OCC's Rules to better identify the funds OCC's would contribute in terms that align with OCC's Capital Management Policy.

(3) Calculating LNAFBE Available as Skin-in-the-Game

Because OCC proposes to replace references to ''current or retained earnings,'' OCC would also delete the first sentence of Rule 1006(e)(iii), which currently provides for how OCC determines its ''current earnings'' for purposes of the amount available to cover losses under Rule 1006(e)(i) and Rule 1006(e)(ii). In its place, the first sentence of Rule 1006(e)(iii) would set out how OCC would determine its LNAFBE for purposes of contributing LNAFBE greater than 110% of the Target Capital Requirement to cover default losses and liquidity shortfalls. Specifically, similar to how the Rules currently provide for the calculation of ''current earnings,'' OCC would determine its LNAFBE based on OCC's unaudited financial statements at the close of the calendar month immediately preceding the occurrence of the loss or deficiency under paragraphs (e)(i) or (e)(ii), less an amount equal to the aggregate of all refunds made or authorized to be made or deemed to have been made during the fiscal year in which such loss or deficiency occurs if the refund is not reflected on such unaudited financial statements. Accordingly, OCC would retain the priority given to the payment of refunds that OCC has declared, but not yet issued, as currently provided by OCC Rule 1106(e)(iii), when calculating the amount of LNAFBE available to cover a default loss after contributing the Minimum Corporate Contribution.

OCC would further amend Rule 1006(e)(iii) to provide that in no event shall OCC be required to contribute an amount that would cause OCC's LNAFBE to fall below 110% of the Target Capital Requirement at the time changed. The Capital Management Policy, in accordance with SEC Rule 17Ad–22(e)(15)(ii)(A),[19] currently requires that the funds OCC maintains to satisfy its Target Capital Requirement be separate from OCC's resources to cover participant defaults and liquidity shortfalls. Accordingly, should a default occur in a month during which OCC suffers an operational loss that decreases the value of its excess capital available as skin-in-the-game below what is reflected on the unaudited financial statement at the close of the previous month,[20] OCC would be able to take into account the decrease in its excess capital when calculating its available LNAFBE above 110% of the Target Capital Requirement. In addition, OCC would renumber as Rule 1006(e)(iv) the last sentence of Rule 1006(e)(iii). That sentence, which concerns a defaulting Clearing Member's continuing obligation for losses OCC charges to OCC's own capital, is conceptually distinct from the rest of Rule 1006(e)(iii) and, accordingly, deserves to be addressed separately.

(4) Replenishing the Minimum Corporate Contribution

Finally, OCC would add a new paragraph to Rule 1006(e)—Rule 1006(e)(v)—to provide for a 270 calendar-day period during which the Minimum Corporate Contribution, once charged, would be reduced to the remaining unused portion. OCC believes that 270 calendar days, or approximately nine months, is sufficient time for OCC to accumulate the funds necessary to reestablish the Minimum Corporate Contribution. In making this determination, OCC used the same analysis employed to set the Early Warning and Trigger Event under its Replenishment Plan, both of which are based on the time OCC estimates it would take to accumulate 10% of its Target Capital Requirement.[21] Specifically, OCC took into account its typical monthly earnings and the amount of earnings that would be needed to replenish the Minimum Corporate Contribution on an after-tax basis. Proposed Rule 1006(e)(v) would also provide that OCC shall notify Clearing Members of any such reduction to the Minimum Corporate Contribution.

Each chargeable loss would trigger a new 270-day period. As such, proposed

[18] OCC first established discretionary use of OCC's current or retained earnings to cover default losses in Article VIII (Clearing Fund) of OCC's By-Laws. *See* Exchange Act Release No. 15493 (Jan. 4, 1979), 44 FR 3802 (Jan. 18, 1979) (File No. SR–OCC–79–01). When OCC moved the provisions governing the Clearing Fund from OCC's By-Laws to the Rules in 2018, the provisions governing the usage of the Clearing Fund became Rule 1006(e). *See* Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (File No. SR–OCC–2018–008).

[19] 17 CFR 240.17Ad–22(e)(15)(ii)(A).

[20] Under OCC's current rules, LNAFBE greater than 110% of the Target Capital Requirement and the EDCP Unvested Balance are committed to cover both operational losses and default losses. In the event OCC experiences operational losses and default losses in short succession, OCC would contribute these resources in the manner specified by OCC's Rules to the event that occurred first.

[21] *See* Order Approving Capital Management Policy, 85 FR at 5510–11. OCC has included this analysis as part of confidential Exhibit 3 to File No. SR–OCC–2021–003.

Rule 1006(e)(v) is designed to allow OCC to manage multiple defaults within a 270-day period by eliminating the risk that a successive default would exhaust the resources needed to reestablish the Minimum Corporate Contribution by the end of the initial 270-day period. And while a successive default loss that does not impact excess LNAFBE [22] available to replenish the Minimum Corporation Contribution would nevertheless trigger another 270-day period during which the Minimum Corporate Contribution would be reduced to the remaining unused portion after the first two defaults, any LNAFBE greater than 110% of the Target Capital Requirement would continue to be available to cover successive default losses. In the very unlikely event that OCC experiences an operational loss or a drop in revenue from clearing fees that threatens its ability to reestablish the Minimum Corporate Contribution at the end of the 270-day period, OCC would likely file a rule change to extend the period rather than act to lower the Minimum Corporate Contribution, dependent on the Board's consideration of the same non-exclusive list of factors that the Board would consider when determining whether to adjust the Minimum Corporate Contribution, discussed below.

(b) Amendments to the Capital Management Policy

Consistent with the proposed changes to OCC's Rules, OCC would amend the portions of the Capital Management Policy that concern OCC's usage of excess capital to cover default losses to more specifically identify the resources OCC would contribute to default losses; namely, the Minimum Corporate Contribution and LNAFBE above 110% of the Target Capital Requirement. OCC would clarify that after exhausting the Minimum Corporate Contribution, OCC would continue to offset default losses with LNAFBE, rather than ''Equity,'' above 110% of the Target Capital requirement. This change is not intended to change OCC's current obligations. Rather, OCC intends to conform the Capital Management Policy so that the terms are consistent with those used in the proposed Rules, other requirements in the Capital Management Policy, and OCC's regulatory obligations. Specifically, the Capital Management Policy provides that the resources held to meet the Target Capital Requirement must be liquid assets separate from OCC's resources to cover participant defaults and liquidity shortfalls, consistent with SEC Rule 17Ad–22(e)(15)(ii)(A).[23] Because Equity typically exceeds LNAFBE and because any funds OCC would contribute to cover a default loss would need to be liquid assets, contributing liquid assets in excess of LNAFBE greater than 110% of the Target Capital Requirement would be inconsistent with the Capital Management Policy.

In addition, OCC would amend the Capital Management Policy's list of capital management actions with a material impact on current or future levels of Equity, replacing ''use of current and retained earnings greater than 100% of the Target Capital Requirement'' with ''use of excess capital,'' to align with the title of the Capital Management Policy's ''Excess Capital Usage'' section. That section would also be updated to include a discussion of the factors that the Board would consider in establishing and adjusting the Minimum Corporate Contribution. Factors the Board would consider include, but are not limited to, the regulatory requirements in each jurisdiction in which OCC is registered or in which OCC is actively seeking recognition, the amount similarly situated central counterparties commit of their own resources to address participant defaults, the current and projected level of the EDCP Unvested Balance, OCC's LNAFBE greater than 110% of its Target Capital Requirement, projected revenue and expenses, and other projected capital needs. While the Capital Management Policy would provide that the Board would review Minimum Corporate Contribution annually, the Board would retain authority to change the Minimum Corporate at its discretion. In addition, the Capital Management Policy would be updated to include the substance of and references to proposed Rule 1006(e)(v), which, as discussed above, provides for a 270-day period following a chargeable loss during which the Minimum Corporate Contribution is reduced to its remaining unused portion.

OCC would also amend the definition of LNAFBE in the Capital Management Policy to specifically exclude the Minimum Corporate Contribution, which would be dedicated to cover default losses. The Capital Management Policy defines LNAFBE as the level of cash and cash equivalents, no greater than Equity, less any approved adjustments. The definition currently specifies the exclusion of ''agency-related liabilities, such as Section 31 fees'' as the only approved adjustment. OCC would amend the definition to add the Minimum Corporate Contribution as another example of an approved exemption to the calculation of LNAFBE. As discussed in more detail in the discussion of the statutory basis for these proposed changes below, this proposed amendment to the definition of LNAFBE is intended to ensure that OCC does not double count resources committed to cover default losses as resources available to satisfy regulatory requirements concerning the amount of LNAFBE or other financial resources OCC must maintain to cover operational costs and potential business losses. For similar reasons, OCC would amend the Capital Management Policy's discussion of OCC's Replenishment Plan to add that in the event of an operational loss, OCC shall first use Equity, ''less the Minimum Corporate Contribution,'' above 110% of Target Capital. This amendment reflects that the funds maintained for the Minimum Corporate Contribution are not funds available to cover operational losses.

With respect to OCC's Replenishment Plan, OCC would also amend the definitions of the Early Warning and Trigger Event to exclude the Minimum Corporate Contribution from the calculation of those thresholds so that OCC maintains access to replenishment capital in the event operational losses materialize while still maintaining the Minimum Corporate Contribution exclusively to cover default losses. As described above, the Early Warning and Trigger Event are the thresholds for actions under OCC's Replenishment Plan. Currently, the Early Warning and Trigger Event thresholds are defined with respect to OCC's Equity falling below certain thresholds. OCC is proposing to amend those definitions so that the Early Warning and Trigger Event occur when Equity ''less the Minimum Corporate Contribution'' falls below those same thresholds. These changes would ensure that OCC may maintain the Minimum Corporate Contribution exclusively to address default losses—the effect of which would be to increase Equity relative to LNAFBE—while still maintaining access to its Replenishment Plan should OCC's Equity, less the Minimum Corporate Contribution, fall close to or below the Target Capital Requirement.

[22] As described below, OCC is proposing to amend the Capital Management Policy to exclude the Minimum Corporate Contribution from the definition of LNAFBE. As a result, a second default loss covered exclusively by the Minimum Corporate Contribution would not impact OCC's level of LNAFBE.

[23] *See* 17 CFR 240.17Ad–22(e)(15)(ii)(A).

(c) Amendments to the Default Management Policy, Clearing Fund Methodology Policy, and RWD Plan

To accommodate the proposed establishment of the Minimum Corporate Contribution, OCC proposes conforming changes to other rule-filed policies that describe OCC's default waterfall, as set forth in OCC Rule 1006. In the Default Management Policy, OCC would delete the passage concerning ''Current and Retained Earnings'' in the current discussion of OCC's default waterfall and replace it with the Minimum Corporate Contribution and LNAFBE greater than 110% of the Target Capital Requirement, as provided in the proposed amendments to Rule 1006 above. OCC would also amend the Default Management Policy's definition of ''financial resources'' to include the Minimum Corporate Contribution as among those available to address Clearing Member defaults and suspensions. In the Clearing Fund Methodology Policy, OCC would similarly revise the discussion of the default waterfall in that policy's section covering Clearing Fund charges and assessments to incorporate the Minimum Corporate Contribution, consistent with the proposed amendments to Rule 1006 above. OCC would also amend the Clearing Fund Methodology Policy's definitions of OCC's ''Pre-Funded Financial Resources'' for the purposes of sizing or measuring the sufficiency of the Clearing Fund to include the Minimum Corporate Contribution. Finally, OCC would amend the RWD Plan to replace all references to ''current or retained earnings'' with the Minimum Corporate Contribution and LNAFBE greater than 110% of the Target Capital Requirement, or ''skin-in-the-game'' for short, modify certain example scenarios concerning use of OCC's Enhanced Risk Management and Recovery Tools to account for the proposed Minimum Corporate Contribution, and make certain other conforming changes concerning use of skin-in-the-game to address liquidity shortfalls and, in the case of LNAFBE greater than 110% of the Target Capital Requirement, OCC's authority to use skin-in-the-game to address losses resulting from bank or securities or commodities clearing organization failures, including custody or investment losses.

(2) Statutory Basis

OCC believes the proposed rule changes are consistent with Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') and the rules and regulations thereunder. In particular, OCC believes that the proposed establishment of the Minimum Corporate Contribution and other proposed changes are consistent with Section 17A(b)(3)(F) of the Exchange Act[24] and Rules 17Ad–22(e)(2)(i),[25] 17Ad–22(e)(4), [26] 17Ad–22(e)(15)(ii)(A),[27] 17Ad–22(e)(15)(iii),[28] and Rule 17Ad–22(e)(23)[29] thereunder for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the rules of OCC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The proposed revisions to the Capital Management Policy's definitions of LNAFBE, Early Warning and Trigger Event are designed to ensure that OCC may establish the Minimum Corporate Contribution exclusively to cover default losses while continuing to maintain sufficient LNAFBE for operational expenses such that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses, including by continuing to maintain access to its Replenishment Plan should an operational loss cause OCC's Equity, less the Minimum Corporate Contribution, to fall close to or below OCC's Target Capital Requirement. In other words, conforming these definitions to account for the establishment of the Minimum Corporate Contribution, which will not be available to cover operational losses, ensures that OCC will continue to hold sufficient LNAFBE separate from the Minimum Corporate Contribution and maintain access to its Replenishment Plan to absorb operational losses and avoid a disruption that could negatively impact OCC's prompt and accurate clearing and settlement of transactions. Therefore, OCC believes that the proposed amendments to the definitions of LNAFBE, Early Warning and Trigger Event under its Capital Management Policy, which are reasonably designed to ensure that OCC has sufficient LNAFBE to continue operations in the event of an operational loss, are consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act by protecting investors and the public interest.[30]

Rule 17Ad–22(e)(4) under the Exchange Act provides, in part, that OCC 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 arising from its payment, clearing and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[31] By providing that OCC shall maintain a minimum level of skin-in-the-game—in addition to OCC's LNAFBE greater than 110% of its Target Capital Requirement, contributed prior to charging the Clearing Fund, as OCC's Rules currently provide—OCC is providing for a minimum level of pre-funded financial resources available to cover losses in the event of a Clearing Member default, and reducing the amount OCC would charge the Clearing Fund contributions of non-defaulting Clearing Members. Therefore, OCC believes the amendments to its Rules, the Capital Management Policy, and other related policies to establish the Minimum Corporate Contribution are consistent with Rule 17Ad–22(e)(4).

OCC also believes that the proposed changes to the definition of LNAFBE in OCC's Capital Management Policy, which exclude the Minimum Corporate Contribution from the calculation of LNAFBE, are consistent with Rule 17Ad–22(e)(15)(ii)(A) under the Exchange Act.[32] Rule 17Ad–22(e)(15)(ii)(A) requires that the LNAFBE held by OCC to satisfy the minimum LNAFBE required by Rule 17Ad–22(e)(15)(ii)[33] shall be in addition to resources held to cover participant defaults or other credit or

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] 17 CFR 240.17Ad–22(e)(2)(i).

[26] 17 CFR 240.17Ad–22(e)(4).

[27] 17 CFR 240.17Ad–22(e)(15)(ii).

[28] 17 CFR 240.17Ad–22(e)(15)(iii).

[29] 17 CFR 240.17Ad–22(e)(23).

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 17 CFR 240.17Ad–22(e)(4)(i).

[32] 17 CFR 240.17Ad–22(e)(15)(ii)(A).

[33] Rule 17Ad–22(e)(15)(ii), in turn, requires that OCC hold LNAFBE to the greater of (x) six months of OCC's current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services. 17 CFR 240.17Ad–22(e)(15)(ii). OCC's Capital Management Policy is reasonably designed to meet this requirement, and Rule 17Ad–22(e)(15) more broadly, by providing that OCC sets its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greater of: (x) Six months of OCC's current operating expenses, (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly winddown of critical operations and services, and (z) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. *See* Order Approving Capital Management Policy, 85 FR at 5501–02. In addition, in setting the Target Capital Requirement, OCC's Board considers OCC's projected rolling twelve-months' operating expenses to ensure that OCC maintains Equity and other financial resources approved by the CFTC, as required by CFTC Rule 39.11(a)(2). *See id.* at 5501 n.19 (citing 17 CFR 39.11(a)(2)).

liquidity risks.[34] The proposed revision to OCC's definition of LNAFBE is designed to satisfy Rule 17Ad–22(e)(15)(ii)(A) by providing that the proposed Minimum Corporate Contribution, which would be held exclusively to cover participant defaults and liquidity shortfalls, would be in addition to the LNAFBE that OCC holds to meet or exceed its regulatory capital requirements under Rule 17Ad–22(e)(15)(ii)—*i.e.,* LNAFBE in an amount equal to 110% of OCC's Target Capital Requirement. In addition, the proposed revisions to OCC Rule 1006(e)(iii) and the Capital Management Policy—which would specify that OCC's committed skin-in-the-game shall include the Minimum Corporate Contribution and LNAFBE greater than 110% of the Target Capital Requirements—are reasonably designed to ensure that OCC would not be obligated to contribute an amount of skin-in-the-game that would cause its LNAFBE to fall below the Early Warning threshold intended to ensure OCC maintains sufficient LNAFBE to meet its regulatory obligations. As a result, OCC believes the proposed amendments to the Capital Management Policy are designed to comply with Rule 17Ad–22(e)(15)(ii)(A).

In addition, OCC believes that the proposed amendments to OCC's definition of the Early Warning and Trigger Event thresholds under OCC's Replenishment Plan are consistent with Rule 17Ad–22(e)(15)(iii) [35] because excluding the Minimum Corporate Contribution from those thresholds would ensure that OCC may continue to access replenishment capital in the unlikely event that OCC experiences an operational loss while continuing to maintain the Minimum Corporate Contribution exclusively to cover default losses. Rule 17Ad–22(e)(15)(iii) requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk, including by maintaining a viable plan for raising additional Equity should its Equity fall close to or below the amount required under Rule 17Ad–22(e)(15)(ii).[36] By setting the threshold triggers by reference to the Target Capital Requirement, OCC's Replenishment Plan is designed to require OCC to act to raise capital should its Equity fall close to or below the amounts required under Rule 17Ad–22(e)(15)(ii). However, the effect of holding the Minimum Corporate Contribution would be to increase OCC's Equity relative to LNAFBE available to cover potential operational losses. To help ensure that OCC holds LNAFBE above its Target Capital Requirement and maintains access to replenishment capital, the proposed change would exclude the Minimum Corporate Contribution when measuring OCC's Equity against the Early Warning and Trigger Event thresholds under its Replenishment Plan. Accordingly, OCC believes that the proposed amendments to the definitions of the Early Warning and Trigger Event thresholds are consistent with Rule 17Ad–22(e)(15)(iii).

OCC also believe that the proposed changes are consistent with Rule 17Ad–22(e)(2)(i), which requires that covered clearing agencies maintain written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[37] The proposed changes would align the terminology used in OCC's Rules and other rule-filed policies with the terminology of the Capital Management Policy, providing better clarity and consistency between OCC's governing documents. Specifically, OCC would amend its Rules, Capital Management Policy, Default Management Policy, Clearing Fund Methodology Policy and RWD Plan to identify OCC's sources of skin-in-the-game (the Minimum Corporation Contribution, LNAFBE greater than 110% of the Target Capital Requirement, and the EDCP Unvested Balance) and their places within OCC's default waterfall. The proposed amendments to the Capital Management Policy would also identify factors the Board would consider in setting and adjusting the Minimum Corporate Contribution. Accordingly, OCC believes conforming the terms in these governance arrangements and identifying factors OCC would consider in adjusting the Minimum Corporate Contribution is consistent with Rule 17Ad–22(e)(2)(i).

Finally, OCC believe that the proposed changes are consistent with Rule 17Ad–22(e)(23), which requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures.[38] The proposed changes would amend OCC's Rules to remove the pre-Capital Management Policy references to use of ''retained earnings'' or ''current and retained earnings'' with respect to the sources of OCC's skin-in-the-game, and instead identify the Minimum Corporate Contribution and LNAFBE greater than 110% of the Target Capital Requirement. The proposed changes would also provide greater clarity about how OCC calculates the amount of LNAFBE greater than 110% of the Target Capital Requirement based upon the unaudited financial statements from the close of the prior month; provided, however, that OCC would not be required to contribute an amount that would cause its LNAFBE to fall below 110% of the Target Capital Requirement at the time charged. The proposed changes to OCC Rules would, in turn, be made available on OCC's website. Therefore, OCC believes the proposed changes would disclose relevant default rules and procedures to the public and to Clearing Members.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act [39] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the establishment of a Minimum Corporate Contribution and the other attendant changes discussed above have any impact, or impose any burden, on competition. As discussed above, OCC would charge the Minimum Corporate Contribution to cover a default loss or liquidity shortfall after charging the margin and Clearing Fund deposit of a default Clearing Member, and before charging OCC's LNAFBE above 110% of the Target Capital Requirement, both of which would be exhausted before OCC charged a default loss to the Clearing Fund deposits of non-defaulting members and the EDCP Unvested Balance on a pro rata basis. Accordingly, all Clearing Members would benefit by the establishment of the Minimum Corporate Contribution,

[34] *Id.* Similarly, CFTC Rule 39.11(b)(3) provides that a derivatives clearing organization (''DCO'') may allocate financial resources to satisfy requirements that the DCO possess financial resources (i) to enable the DCO to meet obligations notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions, and (ii) to enable the DCO to cover its operational costs, but not both. *See* 17 CFR 39.11(b)(3).

[35] 17 CFR 240.17Ad–22(e)(15)(iii).

[36] *Id.* As discussed in note 33, *supra,* OCC's Target Capital Requirement is reasonably designed to meet or exceed the minimum LNAFBE required to satisfy Rule 17Ad–22(e)(15)(ii).

[37] 17 CFR 240.17Ad–22(e)(2)(i).

[38] 17 CFR 240.17Ad–22(e)(23).

[39] 15 U.S.C. 78q–1(b)(3)(I).

which would provide a persistent minimum level of skin-in-the-game to absorb default losses or liquidity shortfalls prior to charging such losses to non-defaulting Clearing Members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2021–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2021–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2021–003 and should be submitted on or before March 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04217 Filed 3–1–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91194; File No. SR–CBOE–2020–117]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Certain Rules To Accommodate the Listing and Trading of Index Options With an Index Multiplier of One

February 24, 2021.

On December 23, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain rules to accommodate the listing and trading of index options with an index multiplier of one. The proposed rule change was published for comment in the **Federal Register** on January 11, 2021.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 25, 2021. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates April 11, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2020–117).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04216 Filed 3–1–21; 8:45 am]

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[40] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90853 (January 5, 2021), 86 FR 2006.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91205; File No. SR–NASDAQ–2020–057]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Allow Companies To List in Connection With a Direct Listing With a Primary Offering in Which the Company Will Sell Shares Itself in the Opening Auction on the First Day of Trading on Nasdaq and To Explain How the Opening Transaction for Such a Listing Will Be Effected

February 24, 2021.

On September 4, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow companies to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange and to explain how the opening transaction for such a listing will be effected. The proposed rule change was published for comment in the **Federal Register** on September 21, 2020.[3] On November 4, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve or disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 17, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On February 22, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed, and is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow companies to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq and to explain how the opening transaction for such a listing will be effected.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing this amendment to SR–NASDAQ–2020–057 [8] in order to: (i) Require for the security to be released for trading that the actual price calculated by the cross be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement; (ii) provide that the fourth tie-breaker used in calculating the Current Reference Price is the price that is closest to the lowest price of the price range disclosed by the issuer in its effective registration statement; (iii) provide that for purposes of qualifying a security under the Listing Rules Nasdaq will calculate the value of shares, and determine whether the company has met the applicable Market Value of Unrestricted Publicly Held Shares, bid price and market capitalization requirements, using a price per share equal to the lowest price in the price range disclosed by the issuer in its effective registration statement; (iv) provide that notwithstanding the provisions of Rule 4120(c)(8)(A), Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade and whether to reschedule the offering as described in Rule 4120(c)(8)(A); and make minor technical changes to improve the clarity of this proposal. Nasdaq believes that this amendment addresses the issues raised by the Commission in the OIP.[9] This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq proposes to (i) adopt Listing Rule IM–5315–2 to permit a company to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise''); [10] (ii) amend Rule 4702 to add a new order type (the ''Company Direct Listing Order''), which will be used during the Nasdaq Halt Cross for the shares offered by the company in a Direct Listing with a Capital Raise; and (iii) amend Rules 4120(c)(9), 4753(a)(3) and 4753(b)(2) to establish requirements for disseminating information, establishing the opening price and initiating trading through the Nasdaq Halt Cross in a Direct Listing with a Capital Raise.

Proposed Listing Rule IM–5315–2

Listing Rule IM–5315–1 provides additional initial listing requirements for listing a company that has not previously had its common equity securities registered under the Act on the Nasdaq Global Select Market at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares (a ''Direct Listing''). To

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89878 (September 15, 2020), 85 FR 59349 (September 21, 2020). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2020-057/srnasdaq2020057.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90331 (November 4, 2020), 85 FR 71708 (November 10, 2020).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 90717 (December 17, 2020), 85 FR 84025 (December 23, 2020).

[8] Securities Exchange Act Release No. 89878 (September 15, 2020), 85 FR 59349 (September 21, 2020) (the ''Initial Proposal''). The Commission issued an Order Instituting Proceedings to Determine Whether To Approve or Disapprove the Initial Proposal. *See* Securities Exchange Act Release No. 90717 (December 17, 2020), 85 FR 84025 (December 23, 2020) (the ''OIP'').

[9] Following approval of this proposed rule change Nasdaq intends to file a separate proposal with the Commission that will seek to modify the process for a Direct Listing with a Capital Raise so that it would operate in a manner similar to the Initial Proposal and will seek to address the remaining issues raised in the OIP.

[10] A Direct Listing with a Capital Raise includes situations where either: (i) Only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction.

allow a company to also sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering, the Exchange proposes to adopt Listing Rule IM–5315–2.[11] This proposed rule would allow a company that has not previously had its common equity securities registered under the Act to list its common equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange.

In considering the initial listing of a company in connection with a Direct Listing on the Nasdaq Global Select Market, Listing Rule IM–5315–1 currently provides that the Exchange will determine that such company has met the applicable Market Value of Unrestricted Publicly Held Shares requirements based on the lesser of: (i) An independent third-party valuation of the company (a ''Valuation''); [12] and (ii) the most recent trading price for the company's common stock in a Private Placement Market where there has been sustained recent trading. For a security that has not had sustained recent trading in a Private Placement Market [13] prior to listing, Nasdaq will determine that such Company has met the Market Value of Unrestricted Publicly Held Shares requirement if the Company satisfies the applicable Market Value of Unrestricted Publicly Held Shares requirement and provides a Valuation evidencing a Market Value of Publicly Held Shares of at least $250,000,000.

In contrast, when applying this requirement to a Direct Listing with a Capital Raise, the Exchange and investors know the minimum price at which the company can sell shares in the offering because it is included in the company's registration statement, and therefore Nasdaq is proposing the following:

- Nasdaq will calculate the value of shares, including those being sold by the company and those held by public shareholders immediately prior to the listing, using a price per share equal to the lowest price in the price range disclosed by the issuer in its registration statement.[14] Nasdaq also will determine whether the company has met the applicable bid price and market capitalization requirements based on the same per share price.
- In determining whether the company satisfies the Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, the Exchange will deem such Company to have met the applicable requirement if the amount of the Company's Unrestricted Publicly Held Shares before the offering, along with the market value of the shares to be sold by the company in the Direct Listing with a Capital Raise is at least $110 million (or $100 million, if the Company has stockholders' equity of at least $110 million).[15]

Officers, directors or owners of more than 10% of the company's common stock prior to the opening auction may purchase shares sold by the company in the opening auction, provided that such purchases are not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. In addition, in the same way as for shares of a company listing following a traditional underwritten IPO, such an insider owner may purchase shares sold by other shareholders or sell its own shares in the opening auction and in trading after the opening auction, to the extent not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. Shares held by these types of inside investors are not included in calculations of Publicly Held Shares for purposes of Exchange listing rules except that, as proposed with respect to a Direct Listing with a Capital Raise, all shares sold by the company in the offering and all shares held by Public Holders prior to the offering will be included in the calculation of Publicly Held Shares, even if some of these shares are purchased by inside investors.[16] The Exchange notes that such investors may also acquire in secondary market trades shares sold by the issuer in a Direct Listing with a Capital Raise that were included when calculating whether the issuer meets the Market Value of Unrestricted Publicly Held Shares requirement for initial listing. However, the Exchange notes that a company listing in conjunction with a Direct Listing with a Capital Raise will be required to have a Market Value of Unrestricted Publicly Held Shares much higher than the Exchange's minimum $45 million Market Value of Unrestricted Publicly Held Shares requirement for a traditional underwritten IPO.[17] This heightened requirement, along with the ability of all investors to purchase shares in the opening process on the Exchange, should result in companies using a Direct Listing with a Capital Raise having adequate public float and a liquid trading market after the completion of the opening auction.

Any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[18]

Proposed Listing Rule IM–5315–2 also requires that securities listing in connection with a Direct Listing with a

[11] The Commission did not identify any concerns with proposed Listing Rule IM–5315–2 in the OIP. Accordingly, the only change to proposed IM–5315–2 in this amendment is to reflect that the minimum price at which the company can sell shares is the lowest price in the price range disclosed by the issuer in its effective registration statement. In the Initial Proposal, Nasdaq proposed to allow the company to sell shares at up to a 20% discount to the lowest price in the price range disclosed in the effective registration statement and therefore also to calculate compliance with the listing requirements based on that same price.

[12] IM–5315–1 describes the requirement for a Valuation, including the experience and independence of the entity providing the Valuation.

[13] Nasdaq defines ''Private Placement Market'' in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

[14] As described below, the Nasdaq Halt Cross would not execute at a price that is below the bottom of the disclosed range. Thus, this is the minimum price at which the company could list in connection with a Direct Listing with a Capital Raise.

[15] *See* Listing Rules 5315(f)(2)(A) and (B) that require the Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, not in connection with an IPO, of at least $110 million; or at least $100 million, if the company has stockholders' equity of at least $110 million, respectively. For example, if the company is selling five million shares in the opening auction and there are 45 million shares issued and outstanding immediately prior to the listing that are eligible for inclusion as unrestricted publicly-held shares based on disclosure in the company's registration statement, then the Market Value of Unrestricted Publicly Held Shares will be calculated based on a combined total of 50 million shares. If the lowest price of the price range disclosed in the company's registration statement is $10 per share, the Exchange will attribute to the company a Market Value of Unrestricted Publicly Held Shares of $500 million, based on a $10 price per share.

[16] Rule 5005(a)(35).

[17] *See* Listing Rules 5315(f)(2)(C) that requires the Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, in connection with an IPO, of at least $45 million.

[18] *See* Listing Rules 5315(f)(1), (e)(1) and (2), respectively. Rule 5315(f)(1) requires a security to have: (A) At least 550 total holders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (B) at least 2,200 total holders; or (C) a minimum of 450 round lot holders and at least 50% of such round lot holders must each hold unrestricted securities with a market value of at least $2,500.

Capital Raise must begin trading on Nasdaq following the initial pricing through the Nasdaq Halt Cross, which is described in Rules 4120(c)(8) and 4753. To allow such initial pricing, the company must, in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.[19] However, as described in detail below, Nasdaq proposes to modify Rule 4120(c)(9), in part related to certain functions that are performed by an underwriter in an IPO or a financial advisor in a Direct Listing, to require that in the case of a Direct Listing with a Capital Raise, Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade and whether to postpone and reschedule the offering as described in Rule 4120(c)(8)(A).

Amendment to Rule 4702

The Exchange proposes to amend Rule 4702 to add a new order type, the ''Company Direct Listing Order'' or ''CDL Order'', which will be used for the company's order in a Direct Listing with a Capital Raise. This will be a market order entered for the quantity of shares offered by the issuer, as disclosed in an effective registration statement for the offering that will execute at the price determined in the Nasdaq Halt Cross. A CDL Order may be entered only on behalf of the issuer and the CDL Order may not be cancelled or modified. Only one Nasdaq member, representing the issuer, may enter a CDL Order during a Direct Listing with a Capital Raise. The price of the CDL Order will be set in accordance with Rule 4120(c)(9)(B) that requires, among other things, that the CDL Order is executed at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.

Under Nasdaq rules, a market order, such as the CDL Order, must be executed in full at the price determined in the Nasdaq Halt Cross. In addition, all orders priced better than the price determined in the Nasdaq Halt Cross also would need to be satisfied.[20]

Amendments to Rules 4120(c)(9), 4753(a)(3) and 4753(b)(2)

Nasdaq proposes to amend Rules 4120(c)(9), 4753(a)(3) and 4753(b)(2) to establish requirements for disseminating information, establishing the opening price and initiating trading through the Nasdaq Halt Cross in a Direct Listing with a Capital Raise.

Under the proposal, in the case of the Direct Listing with a Capital Raise, a security shall not be released for trading by Nasdaq unless the actual price calculated by the cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.[21] This requirement would be in addition to the existing conditions described in Rule 4120(c)(8)(A)(i), (ii), and (iii), which would continue to apply, as modified by the proposed changes to Rule 4120(c)(9), as described below.[22]

Rules 4120(c)(8) and (9) provide that the underwriter of the IPO, or the financial advisor in a Direct Listing, respectively, provide notice to Nasdaq that the security subject to the Nasdaq Halt Cross is ''ready to trade.'' [23] These rules also provide that the underwriter of the IPO, or the financial advisor in a Direct Listing, with concurrence of Nasdaq, may determine at any point during the Halt Cross process up through the conclusion of the pre-launch period to postpone and reschedule the pricing of the security subject to the Nasdaq Halt Cross.

However, Nasdaq proposes to require that in the case of a Direct Listing with a Capital Raise, Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade and whether to postpone and reschedule the offering as described in Rule 4120(c)(8)(A). Specifically, Nasdaq auction technology displays the Current Reference Price, which is the price at which the auction can cross the largest number of securities subject to the Nasdaq Halt Cross. If the auction cannot match all the entered orders at the Current Reference Price, an imbalance on the buy or sell side is displayed and provided via Nasdaq data feeds. Nasdaq would determine that the security is ready to trade when Nasdaq believes, based on the displayed information referenced above, that a reasonable volume of securities will cross on the initial trade to minimize the immediate price volatility following the initial pricing.[24] Nasdaq may consult with the financial advisor to the issuer as to the reasonableness of such volume but can determine that the security is ready to trade without such consultation. Once Nasdaq has determined that the security is ready to trade, which will satisfy the requirement of Rule 4120(c)(8)(A)(i), Nasdaq shall release the security for trading if the conditions described in Rules 4120(c)(8)(A)(ii) and (iii) are met and the actual price calculated by the Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.

If there is insufficient buy interest to satisfy the CDL Order, and all other market orders, as required by this proposed rule, or if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement, the Cross would not proceed and such security would not begin trading. In such event, because the Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify market participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered

[19] As noted below, the Exchange also proposes to amend Rule 4120(c)(9) to specify that any services provided by such financial advisor to the issuer of a security, including a company listing in connection with a Direct Listing with a Capital Raise, must provide such services in a manner that is consistent with all federal securities laws, including Regulation M and other anti-manipulation requirements.

[20] The Commission did not identify any concerns with the proposed changes to Rule 4702 in the OIP. Accordingly, no changes to that proposed rule are proposed in this amendment. Nasdaq notes that the proposed CDL Order is similar in some respects to a limit order because it cannot execute at a price less than the lowest price in the price range disclosed by the issuer in its effective registration statement. As a market order, the CDL Order is guaranteed to execute in the Nasdaq Halt Cross.

[21] *See* Proposed Rule 4120(c)(9)(B).

[22] Rule 4120(c)(8)(A) provides that a security will not be released for trading until Nasdaq receives notice from the underwriter of the IPO or financial advisor in the case of a Direct Listing that the security is ready to trade, the system verifies that all market orders will be executed in the Cross, and the price determined in the Cross satisfies a price validation test.

[23] Rule 4120(c)(8)(A)(i) provides that Nasdaq receives notice from the underwriter of the IPO that the security is ready to trade. The Nasdaq system will calculate the Current Reference Price at that time and display it to the underwriter. If the underwriter then approves proceeding, the Nasdaq system will conduct certain validation checks. Under this proposal, Nasdaq will take over these functions of the underwriter, as described in detail below.

[24] Rules 4120(c)(8)(B) and (c)(9) provide that the financial advisor selects certain price bands for purposes of applying a price validation test that occurs once the financial advisor notifies Nasdaq that the security is ready to trade. Given that Nasdaq proposes that in connection with a Direct Listing with a Capital Raise Nasdaq, rather than the financial advisor, determines that the security is ready to trade, the financial advisor will have no purpose in setting the bands. Accordingly, because Nasdaq determines when the security is ready to trade, it is appropriate for Nasdaq to set the price bands. Nasdaq intends to set the price bands at zero.

on the Exchange, including the CDL Order, would be cancelled back to the entering firms.

Because the CDL Order will be a market order, if the Halt Cross proceeds, that order will execute in full in the Halt Cross, along with orders priced at or better than the price determined in the Halt Cross. As noted above, the Halt Cross would not be allowed to proceed if the actual price calculated by the Cross is below the lowest price or above the highest price of the price range disclosed by the company in its effective registration statement.

Nasdaq also proposes changes to Rules 4753(a)(3) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator, in the case of a Direct Listing with a Capital Raise and for how the price at which the Nasdaq Halt Cross will execute. In each case, where there are multiple prices that would satisfy the conditions for determining a price, Nasdaq proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise, to use the lowest price of the price range disclosed by the issuer in its effective registration statement.

In this Amendment No. 1, Nasdaq also proposes changes to address concerns raised by the Commission in the OIP relating to Rule 4120. Specifically, consistent with Nasdaq's original intent, as revised, the price bands established by Rule 4120(c)(8) cannot act to cause the Halt Cross to occur outside of the price range disclosed by the issuer in its effective registration statement because the actual price calculated by the Cross is required to be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.[25]

Finally, Nasdaq proposes to amend Rule 4120(c)(9) to specify that the activities performed by a financial advisor under Rule 4120(c)(8) must be conducted in a manner that is consistent with all federal securities laws, including Regulation M and other anti-manipulation requirements.[26] This change will apply to traditional Direct Listings, as described under IM–5315–1, IM–5405–1 and IM–5505–1, as well as to Direct Listings with a Capital Raise, as described under proposed IM–5315–2.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5) of the Act,[28] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq believes that the proposed amendment to the listing requirements is consistent with the protection of investors. The proposal would require that a company completing a Direct Listing with a Capital Raise have an aggregate market value of unrestricted publicly-held shares immediately prior to listing together with the market value of shares the company sells in the opening auction total at least $110 million (or $100 million, if the Company has stockholders' equity of at least $110 million), with such market value calculated using a price per share equal to the lowest price of the price range established by the issuer in its effective registration statement. While officers, directors or owners of more than 10% of the company's common stock prior to the opening auction may purchase shares sold by the company or other shareholders in the opening transaction on Nasdaq, in the event that such purchases are not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws, Nasdaq expects that a company expecting to sell a significant portion of its shares to officers, directors and existing significant shareholders would not undertake a public listing through a Direct Listing with a Capital Raise but would raise capital in a private placement or a similar transaction instead. Nasdaq also notes that a company may list on the Global Select Market in connection with its initial public offering with a market value of unrestricted publicly held shares of $45 million and that unlike a company listing in connection with a Direct Listing that could qualify for the price-based initial listing requirements based on a Valuation, a company listing in connection with a Direct Listing with a Capital Raise, like an IPO, must qualify for such requirements based on the minimum price at which it could sell shares in the offering. The higher requirement, along with the ability of all investors to purchase shares in the opening process on the Exchange, should result in companies using a Direct Listing with a Capital Raise having adequate public float and a liquid trading market after the completion of the opening auction.

Nasdaq also believes that it is consistent with the protection of investors to calculate the security's bid price and values derived from the security's price using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement. Nasdaq will allow the Halt Cross to take place as low as this price, but no lower, and so this is the minimum price at which the company could be listed.

The proposed requirement that a company that lists on the Nasdaq Global Select Markets through a Direct Listing with a Capital Raise must begin trading of the company's securities following the initial pricing through the Halt Cross will promote fair and orderly markets by protecting against volatility in the pricing and initial trading of securities covered by the proposed rule change because a substantial number of buy and sell orders is expected to be executed in the Halt Cross at a single price rather than in the secondary trading at fluctuating prices. Accordingly, Nasdaq believes these changes, as required by Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listing in connection with a Direct Listing with a Capital Raise on the Nasdaq Global Select Market.

Nasdaq also believes that the proposed adoption of the CDL Order type in Rule 4702 and the addition of requirements to the operation of the Nasdaq Halt Cross in Rule 4120(c)(9) will remove impediments to and perfect the mechanism of a free and open market and a national market system because it would guarantee that the Nasdaq Halt Cross would only occur within the specified price range, as described above, and, if the Halt Cross occurs, all shares offered by the company would be sold at such price. Unlike an IPO, a company listing through a Direct Listing with a Capital Raise would not have an underwriter to

[25] In addition, in the OIP the Commission expressed concern that the financial advisor could, in effect, cancel the non-cancellable CDL Order by rescheduling the offering. To address this concern, this amendment modifies the rules to provide that Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade and whether to postpone and reschedule the offering as described in Rule 4120(c)(8)(A). Finally, the proposed changes to Rule 4753 have been modified to reflect that the lowest price at which the Nasdaq Halt Cross can occur is the lowest price of the price range disclosed by the issuer in its effective registration statement.

[26] Rule 4120(c)(8) describes the activities performed by an underwriter in an IPO and by a financial advisor in a Direct Listing.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

guarantee that a specified number of shares would be sold by the company at a price consistent with disclosure in the company's effective registration statement. This certainty would be effected in two ways. First, the proposed CDL Order would be required to be equal to the total number of shares disclosed as being offered by the company in the prospectus included in the effective registration statement filed in connection with its listing. The Nasdaq Halt Cross would only occur if all of the shares in this market order could be executed. Second, the Nasdaq Halt Cross would be required to occur at a price per share that is within the price range disclosed by the issuer in its effective registration statement. Nasdaq further believes that these proposed changes would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed to function seamlessly with the existing process for the Nasdaq Halt Cross, including dissemination of information about the expected price.

Nasdaq believes that the CDL Order and related clarifications will clearly define the method by which the issuer participates in the opening auction, to prevent the issuer from being in a position to improperly influence the price discovery process, and to design an auction that is otherwise consistent with the disclosures in the registration statement. Specifically, the CDL Order entered on the company's behalf could not be executed at a price below the low end or above the high end of the price range in the company's effective registration statement and, as a market order, the full quantity of shares in the CDL Order would have to be executed in the opening auction. In addition, the CDL Order cannot be modified and the financial advisor to the company will be unable to reschedule the offering once it begins. As such, Nasdaq believes that the proposed process provides reasonable assurance that the opening auction and subsequent trading promote fair and orderly markets and that the proposed rules are designed to prevent manipulative acts and practices, and protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

Nasdaq believes that it is consistent with the protection of investors and the public interest to require that in the case of a Direct Listing with a Capital Raise, Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade and whether to postpone and reschedule the offering as described in Rule 4120(c)(8)(A) because Nasdaq would determine that the security is ready to trade when Nasdaq believes, based on the available information, that a reasonable volume of securities will cross on the initial trade to minimize the immediate price volatility following the initial pricing. Nasdaq also believes that its ability to consult the financial advisor to the issuer is consistent with the protection of investors because the financial advisor would be expected to gather relevant information in connection with the Direct Listing with a Capital Raise by engaging in certain price discovery activities with potential buyers and sellers and such information could be shared with Nasdaq. Nasdaq believes that as part of their regular activities as full-service broker-dealer, such firm's capital markets and sales and trading desk personnel may contact or be contacted by potential investors and current holders of the securities subject to the Nasdaq Halt Cross in the normal course of their activities and may, in that capacity, inform and educate interested persons regarding the company and obtain information regarding pre-listing buying and selling interest in such securities (including with regard to price, volume and timing expectations), which information may also be provided to Nasdaq in order to support an effective price discovery process by Nasdaq.

Nasdaq notes that, as described above, Nasdaq will be able to postpone and reschedule the offering only if there is insufficient buy interest to satisfy the CDL Order, and all other market orders, as required by this proposed rule, or if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement.

Nasdaq also believes that it is consistent with the protection of investors and the public interest to remind financial advisors in a Direct Listing, including Direct Listings with a Capital Raise, that activities in connection with the listing must be conducted in a manner that is consistent with the federal securities laws, including Regulation M and other anti-manipulation requirements.

Nasdaq believes that the proposed rule change to modify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest. For a Direct Listing, in using the Halt Cross to initiate the initial trading in the company's securities, the Current Reference Price and price at which the Nasdaq Halt Cross will occur may be based on the most recent transaction price in a Private Placement Market where the security has had recent sustained trading in such a market over several months; otherwise the price will be determined by the Exchange in consultation with a financial advisor to the issuer. For an IPO, however, the fourth tie-breaker used in calculating the Current Reference Price, is the price that is closest to the Issuer's Initial Public Offering Price. Because a Direct Listing with a Capital Raise is similar to an IPO in that the company sells securities in the offering, the proposed rule change provides that the forth tie-breaker in calculating the Current Reference Price for such security is the lowest price of the price range disclosed by the issuer in its effective registration statement, which is the minimum price at which the Halt Cross will occur.

Finally, while a commenter expressed concerns that that the expansion of direct listings would compound problems that shareholders face in tracing their share purchases to a registration statement,[29] the Commission has previously considered and rejected these concerns.[30] In that regard, the Commission has determined that investor protection concerns relating to tracing challenges are not unique to direct listings, including where the company itself would sell shares in the opening auction on the first day of trading on the Exchange in addition to, or instead of, facilitating sales by selling shareholders (''Primary Direct Floor Listing''), and stated that it did not expect ''any such tracing challenges in this context to be of such magnitude as to render the proposal inconsistent with the Act.'' [31] On the other hand, the Commission found that allowing a Primary Direct Floor Listing ''will provide benefits to existing and potential investors relative to firm

[29] *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission (October 8, 2020), available at *https://www.sec.gov/comments/sr-nasdaq-2020-057/srnasdaq2020057-7888884-224228.pdf. See also* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission (January 13, 2021), available at *https://www.sec.gov/comments/sr-nasdaq-2020-057/srnasdaq2020057-8241868-227781.pdf.*

[30] Securities Exchange Act Release No. 89684 (August 26, 2020), 85 FR 54454 (September 1, 2020) (approval by delegated authority of SR–NYSE–2019–67). On December 22, 2020, the Commission issued an order setting aside the action by delegated authority and approving the proposed rule change. Securities Exchange Act Release No. 90768 (December 22, 2020), 85 FR 85807 (December 29, 2020) (the ''NYSE Approval'').

[31] NYSE Approval at 85816.

commitment underwritten offerings'' [32] because the structure ''has the potential to broaden the scope of investors that are able to purchase securities in an initial public offering, at the initial public offering price, rather than in aftermarket trading'' and ''may allow for efficiencies in IPO pricing and allocation.'' [33] Similarly, while the commenter expressed concern that that the expansion of direct listings may lead to a decline in effective governance at U.S. public companies, presumably because of the lack of an underwriter in the offering, Nasdaq believes that this concern is unsubstantiated and challenges in this context are not of such magnitude as to render the proposal inconsistent with the Act. Moreover, in approving the Primary Direct Floor Listing proposal the Commission concluded that it ''does not view a firm commitment underwriting as necessary to provide adequate investor protection in the context of a registered offering.'' [34] As a result, consistent with the purposes of the Act, the proposed rule change may provide investors with additional investment opportunities and companies with more options for becoming publicly traded.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, but would rather increase competition. In that regard, the Commission recently approved a similar proposal to allow a Primary Direct Floor Listing on the New York Stock Exchange.[35] Allowing Nasdaq to have similar rules will give issuers interested in this pathway to access the capital markets a choice of listing venues, which will enhance competition among exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–057 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–2020–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–057, and should be submitted on or before March 23, 2021 .

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04222 Filed 3–1–21; 8:45 am]

BILLING CODE 8011–01–P

[32] *Id.*

[33] *Id.*

[34] *Id.* at 85815.

[35] *See* NYSE Approval, above footnote 30.

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91202]

Order Granting Application by Nasdaq ISE, LLC for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to the Nasdaq Rule 1000 Series Incorporated by Reference

February 24, 2021.

Nasdaq ISE, LLC (the ''Exchange'') has filed with the Securities and Exchange Commission (the ''Commission'') an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] from the rule filing requirements of Section 19(b) of the Exchange Act [2] with respect to certain rules of The Nasdaq Stock Market LLC (''Nasdaq'') that the Exchange seeks to incorporate by reference (''Nasdaq Rule 1000 Series'').[3] Section 36(a)(1) of the Exchange Act,[4] subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange filed a proposed rule change [5] under Section 19(b) of the Exchange Act to replace its existing membership rules, as set forth in General 3 of its rulebook, with the Rule 1000 Series of the Nasdaq rulebook, as such rules may be in effect from time to time. Namely, in the proposed rule change, the Exchange proposed to incorporate by reference the Nasdaq Rule 1000 Series such that Nasdaq Rule 1000 Series would be applicable to the Exchange's applicants, members, associated persons, and other persons subject to the Exchange's jurisdiction as though such rules were fully set forth within the Exchange's rulebook.[6]

[1] 15 U.S.C. 78mm(a)(1).

[2] 15 U.S.C. 78s(b).

[3] *See* letter from Brett M. Kitt, Principal Associate General Counsel, Nasdaq Inc., to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated December 30, 2020 (''Exemptive Request'').

[4] 15 U.S.C. 78mm(a)(1).

[5] *See* Securities Exchange Act Release No. 90903 (January 12, 2021), 86 FR 5284 (January 19, 2021) (SR–ISE–2020–43). Although the proposed rule change was filed pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act, and thereby became effective upon filing with the Commission, the Exchange stipulated in its proposal that the incorporation by reference would not be operative until such time as the Commission grants this Exemptive Request.

[6] *See* note 5, *supra.*

The Exchange has requested, pursuant to Rule 0–12 under the Exchange Act,[7] that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchange's rules that are effected solely by virtue of a change to the Nasdaq Rule 1000 Series that are incorporated by reference. Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to the Nasdaq Rule 1000 Series that are cross-referenced in the Exchange's rules without the need for the Exchange to file separately the same proposed rule change pursuant to Section 19(b) of the Exchange Act.[8]

The Exchange represents that the Nasdaq Rule 1000 Series are not trading rules.[9] Moreover, the Exchange states that it proposes to incorporate by reference a category of rules (rather than individual rules within a category).[10] The Exchange also represents that, as a condition of this exemption, the Exchange will provide written notice to its applicants and members whenever Nasdaq proposes a change to Nasdaq Rule 1000 Series.[11]

According to the Exchange, this exemption is necessary and appropriate because it will result in the Exchange's membership rules and processes being consistent with the relevant cross-referenced Nasdaq membership rules and processes at all times.[12] The Exchange states that harmonization of the membership rules and processes between the Exchange and Nasdaq will ease compliance burdens for those seeking membership on both exchanges and increase internal efficiencies associated with administering the membership rules and processes of each exchange.[13]

The Commission has issued exemptions similar to the Exchange's request.[14] In granting similar exemptions, the Commission stated that it would consider future exemption requests, provided that:

- A self-regulatory organization (''SRO'') wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act; [15]
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[16]

The Commission believes that the Exchange has satisfied each of these conditions. Further, the Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.[17] The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it incorporates by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its applicants and members whenever Nasdaq changes a rule that the Exchange incorporates by reference.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act,[18] that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its applicants and members whenever Nasdaq proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04219 Filed 3–1–21; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 240.0–12.

[8] *See* Exemptive Request, *supra* note 3.

[9] *Id.*

[10] *Id.* at 2 n.7.

[11] *Id.* at 3. The Exchange states that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b–4(l) within the timeframe required by such Rule. In addition, the Exchange states that the website posting will include a link to the location on Nasdaq's website where the applicable proposed rule change is posted. *Id.* at 3 n.8.

[12] *See id.* at 2.

[13] *See id.*

[14] *See, e.g.,* Securities Exchange Act Release Nos. 86896 (September 6, 2019), 84 FR 48186 (September 12, 2019) (order granting application by Nasdaq BX, Inc. for exemption pursuant to section 36(a) of the Exchange Act from the rule filing requirements of section 19(b) of the Exchange Act with respect to the Nasdaq Rule 1000 Series incorporated by reference); 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAX PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR–BX–2012–030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (''BATS Options Market Order''); and 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

[15] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (''Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule'').

[16] *See* BATS Options Market Order, *supra* note 14 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (''2004 Order'')).

[17] *See* BATS Options Market Order, *supra* note 14, 75 FR at 8761; *see also* 2004 Order, *supra* note 16, 69 FR at 8502.

[18] 15 U.S.C. 78mm.

[19] 17 CFR 200.30–3(a)(76).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91203]

Order Granting Application by Cboe C2 Exchange, Inc. for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

February 24, 2021.

Cboe C2 Exchange, Inc. (''C2'' or the ''Exchange'') has filed with the Securities and Exchange Commission (the ''Commission'') an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] from the rule filing requirements of Section 19(b) of the

[1] 15 U.S.C. 78mm(a)(1).

Exchange Act [2] with respect to certain rules of Cboe Exchange, Inc. (''Cboe'') that the Exchange seeks to incorporate by reference.[3] Section 36(a)(1) of the Exchange Act,[4] subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange filed a proposed rule change [5] under Section 19(b) of the Exchange Act to update various C2 Rules and Chapters to reflect changes to the Cboe Options rulebook. Namely, in the proposed rule change, the Exchange proposed to incorporate by reference rule changes made to each Cboe Options rule cross-referenced in the following C2 chapters or sections: Chapter 3, Section B (TPH Registration); [6] Chapter 4, Section A (Equity and ETP Options); [7] Chapter 4, Section B (Index Options); [8] Chapter 5 (Business Conduct); [9] Chapter 6, Section E (Intermarket Linkage); [10] Chapter 6, Section F (Exercises and Deliveries); [11] Chapter 7, Section A; [12] Chapter 7, Section B; [13] Chapter 9 (Doing Business with the Public); [14] Chapter 10 (Margin Requirements); [15] Chapter 1 (Net Capital Requirements); [16] Chapter 12 (Summary Suspension); [17] Chapter 13 (Discipline); [18] Chapter 14 (Arbitration); [19] and Chapter 15 (Hearings and Review) [20] (the ''Cboe Incorporated Rules'').

The Commission notes it previously granted C2 an exemption from the rule filing requirements of Section 19(b) of the Act for the rules of the Cboe set forth in the C2 rules referenced above.[21] Since that time, the Cboe has renumbered and relocated the previously incorporated rules within its rulebook. As a result, C2 has submitted this exemptive request to reflect rule number changes in the Cboe Options rulebook. Specifically, the Exchange is now requesting, pursuant to Rule 0–12 under the Exchange Act,[22] that the Commission grant an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Chapters 3–7 and 9–15 of the Exchange's rules that are effected solely by virtue of a change to a Cboe Incorporated Rule. The Exchange requests that it be permitted to incorporate by reference changes made to the Cboe Incorporated Rules without the need for the Exchange to file separately the same proposed rule change pursuant to Section 19(b) of the Exchange Act.[23]

The Exchange represents that the Cboe Incorporated Rules are not trading rules.[24] Moreover, the Exchange states that it proposes to incorporate by reference a category of rules (rather than individual rules within a category).[25] The Exchange also represents that, as a condition of this exemption, the Exchange will provide written notice to its applicants and members whenever Cboe proposes a change to a Cboe Incorporated Rule.[26]

According to the Exchange, this exemption is necessary and appropriate to maintain consistency between C2 rules and the Cboe Incorporated Rules, thus helping to ensure identical regulation of C2 Permit Holders that are also Cboe Trading Permit Holders with respect to the incorporated provisions as well as helping to ensure that C2-only Permit Holders are subject to consistent regulation as Cboe Trading Permit Holders.[27] The Exchange believes that, without such an exemption, such Permit Holders could be subject to two different standards.[28]

The Commission has issued exemptions similar to the Exchange's request.[29] In granting similar exemptions, the Commission stated that it would consider future exemption requests, provided that:

- A self-regulatory organization (''SRO'') wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act; [30]
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

[2] 15 U.S.C. 78s(b).

[3] *See* letter from Rebecca Tenuta, Counsel, Cboe C2 Exchange, Inc. to Vanessa Countryman, Secretary, Commission, dated February 9, 2021 (''Exemptive Request'').

[4] 15 U.S.C. 78mm(a)(1).

[5] *See* Securities Exchange Act Release No. 87646 (December 2, 2019), 84 FR 66938 (December 6, 2019) (SR–C2–2019–025).

[6] Incorporates by reference Cboe Options Chapter 3, Section B.

[7] Incorporates by reference Cboe Options Chapter 4, Section A.

[8] Incorporates by reference Cboe Options Chapter 4, Section B.

[9] Incorporates by reference Cboe Options Chapter 8.

[10] Incorporates by reference Cboe Options Chapter 5, Section E.

[11] Incorporates by reference Cboe Options Chapter 6, Section B.

[12] Incorporates by reference Cboe Options Chapter 7, Section A.

[13] Incorporates by reference Cboe Options Chapter 7, Section B.

[14] Incorporates by reference Cboe Options Chapter 9. *See* also Securities Exchange Act Release No. 87646 (December 2, 2019), 84 FR 66938 (December 6, 2019) (SR–C2–2019–025), which relocated former Rule 3.19 to Rule 9.20 in order to include Cboe Options Rule 9.20 in C2 Chapter 9's incorporation of Cboe Options Chapter 9 by reference, as former Rule 3.19 is identical to Cboe Options Rule 9.20 and it is within the same category of exchange rules otherwise incorporated into C2 Chapter 9 by reference to Cboe Options Chapter 9 (*i.e.* rule related to doing business with the public).

[15] Incorporates by reference Cboe Options Chapter 10.

[16] Incorporates by reference Cboe Options Chapter 11.

[17] Incorporates by reference Cboe Options Chapter 12.

[18] Incorporates by reference Cboe Options Chapter 13.

[19] Incorporates by reference Cboe Options Chapter 14.

[20] Incorporates by reference Cboe Options Chapter 15.

[21] *See* Securities Exchange Act Release Nos. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009); and 80339 (March 29, 2017), 82 FR 16442 (April 4, 2017).

[22] 17 CFR 240.0–12.

[23] *See* Exemptive Request, *supra* note 3.

[24] *Id.*

[25] *Id.*

[26] The Exchange states that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b-4(l) within the timeframe required by such Rule. In addition, the Exchange states that the website posting will include a link to the location on Cboe's website where the applicable proposed rule change is posted. *Id.*

[27] *See* Exemptive Request, *supra* note 3.

[28] *See id.*

[29] *See, e.g.,* Securities Exchange Act Release Nos. 86896 (September 6, 2019), 84 FR 48186 (September 12, 2019) (order granting exemptive request from Nasdaq BX, Inc. relating to rules of The Nasdaq Stock Market LLC incorporated by reference) (''Nasdaq BX Order''); 86422 (July 22, 2019), 84 FR 36151 (July 26, 2019) (order granting exemptive request from Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq Phlx LLC relating to rules of The Nasdaq Stock Market LLC incorporated by reference); 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAX PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); and 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference).

[30] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (''Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule'').

• The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[31]

The Commission believes that the Exchange has satisfied each of these conditions. Further, the Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it incorporates by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its applicants and members whenever Cboe changes a Cboe Incorporated Rule.

Accordingly, It is Ordered, pursuant to Section 36 of the Exchange Act,[32] that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its applicants and members whenever Cboe proposes to change a Cboe Incorporated Rule.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04220 Filed 3–1–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Advisers Act Release No. 5690/ 803–00247]

Lewis Family Advisors, LLC

February 24, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an exemptive order under section 202(a)(11)(H) of the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANT: Lewis Family Advisors, LLC (the ''Applicant'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 202(a)(11)(H) of the Advisers Act from section 202(a)(11) of the Advisers Act.

SUMMARY OF APPLICATION: The Applicant requests that the Commission issue an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act, which defines the term ''investment adviser.''

FILING DATES: The application was filed on June 4, 2018, and amended on August 30, 2019, and December 8, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicant with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on March 22, 2021, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicant: Lewis Family Advisors, LLC, c/o Clare F. Black, Esq., at *clare.black@lewismc.com.*

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website either at *http://www.sec.gov/rules/iareleases.shtml* or by calling (202) 551–8090.

Applicant's Representations

1. The Applicant is a Nevada Family Trust Company and a multi-generational single-family office that provides or intends to provide services to the family and descendants of Ralph M. Lewis. The Applicant is wholly-owned by Family Clients and is exclusively controlled (directly and indirectly) by one or more Family Members and/or Family Entities in compliance with Rule 202(a)(11)(G)–1 (the ''Family Office Rule''). For purposes of the application, the term ''Lewis Family'' means the lineal descendants of Ralph M. Lewis, their spouses or spousal equivalents, and all other persons and entities that qualify as ''Family Clients'' as defined in paragraph (d)(4) of the Family Office Rule. Unless otherwise indicated, capitalized terms herein have the same meaning as defined in the Family Office Rule.

2. The Applicant provides both advisory and non-advisory services (collectively, ''Services'') to members of the Lewis Family. Any Service provided by the Applicant that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an ''Advisory Service.''

3. The Applicant represents that: (i) Each of the persons served by the Applicant is a Family Client (*i.e.,* the Applicant has no investment advisory clients other than Family Clients as required by paragraph (b)(1) of the Family Office Rule); (ii) the Applicant is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule; and (iii) the Applicant does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule. At the time of the application, the Applicant represents that Family Members account for approximately 99% of the natural persons to whom the Applicant provides Advisory Services.

4. In addition to the Family Clients, the Applicant desires to provide Services (including Advisory Services) to a niece (''Niece'') of Ralph M. Lewis (the ''Additional Family Client''). The Additional Family Client does not have an ownership interest in the Applicant. The Applicant represents that the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Client) would make up at least 100% of the assets for which the Applicant provides Advisory Services.

5. The Applicant represents that the Niece has been supported by Family Members and has been considered and treated as a close family member of the Lewis Family for purposes of intrafamilial affection for many years and has attended various family events. The Applicant maintains that including the Additional Family Client in the ''family'' would be consistent with the existing familial relationship among the family members.

[31] *See* Nasdaq BX Order, *supra* note 29.

[32] 15 U.S.C. 78mm.

[33] 17 CFR 200.30–3(a)(76).

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. . . .''

2. The Applicant falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Applicant is currently eligible but would no longer qualify if the Applicant provides Services to the Additional Family Clients. Absent the requested relief, once the Applicant provides Services to the Additional Family Client and can no longer rely on the Family Office Rule, the Applicant would be required to register as an investment adviser in the State of Nevada and would be subject to regulation in the State of Nevada, notwithstanding that (i) the Applicant does not hold itself out to the public as an investment adviser and does not market non-public offerings to persons or entities that are not Family Clients, (ii) the Applicant is wholly owned and controlled by members of the Lewis Family, in accordance with paragraph (b)(2) of the Family Office Rule, and (iii) the Applicant is a ''family office'' for the Lewis Family and will not offer its Services to anyone other than Family Clients and the Additional Family Client.

3. The Applicant submits that its proposed relationship with the Additional Family Client does not change the nature of the office into that of a commercial advisory firm. In support of this argument, the Applicant notes that if the Common Ancestor chosen were one branch higher in the familial tree, the Niece would be a Family Member. The Applicant states that in requesting the order, the Applicant is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Indeed, although the Additional Family Client does not fall within the definition of Family Member, the Applicant represents that the Additional Family Client has been treated as a close family member of the Lewis Family for many years. Additionally, the Applicant represents that if the Additional Family Client's assets were managed by the Applicant, the assets owned by the Additional Family Client would represent less than half of one percent (.5%) of the Applicant's assets under management.

4. The Applicant also submits that there is no public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant states that the office is a private organization that was formed to be the family trust company for the Lewis Family, and that the Applicant does not have any public clients. The Applicant maintains that the office's Advisory Services are exclusively tailored to the needs of the Lewis Family and the Additional Family Client. The Applicant argues that the provision of Advisory Services to the Additional Family Client does not create any public interest that would require the office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a ''family office'' that complies in all respects with the Family Office Rule.

5. The Applicant argues that, although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission recognized in proposing the rule that the exact representations, conditions, or terms contained in every exemptive order could not be captured in a rule of general applicability. The Commission noted that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that did not meet the proposed family client definition, and that certain issues would be more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability.

6. The Applicant maintains that, based on its unusual circumstances—desiring to provide Services to one Additional Family Client who has been considered and treated as a family member and whose status as a client of the office would not change the nature of the office's operations to that of a commercial advisory business—an exemptive order is appropriate based on the Applicant's specific facts and circumstances.

7. For the foregoing reasons, the Applicant requests an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act. The Applicant submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

Applicant's Conditions

1. The Applicant will offer and provide Advisory Services only to Family Clients and to the Additional Family Client, who generally will be deemed to be, and be treated as if she were, a Family Client; provided, however, that the Additional Family Client will be deemed to be, and treated as if she were, a Family Member for purposes of paragraph (b)(1) and for purposes of paragraph (d)(4)(vi) of the Family Office Rule.

2. The Applicant will at all times be wholly-owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members or Family Entities (excluding the Additional Family Client's Family Entities) as defined in paragraph (d)(5) of the Family Office Rule.

3. At all times the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Client's Family Entities) will account for at least 99% of the assets for which the Applicant provides Advisory Services.

4. The Applicant will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this application.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04215 Filed 3–1–21; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Affordable Care Act Internal Claims and Appeals and External Review Disclosures

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments

concerning affordable care act internal claims and appeals and external review disclosures.

DATES: Written comments should be received on or before May 3, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Affordable Care Act Internal Claims and Appeals and External review Disclosures.

OMB Number: 1545–2182.

Regulation Project Number: REG–125592–10 (TD 9494).

Abstract: Section 2719 of the Public Health Service Act, incorporated into Code section 9815 by section 1563(f) of the Patient Protection and Affordable Care Act, Public Law 111–148, requires group health plans and issuers of group health insurance coverage, in connection with internal appeals of claims denials, to provide claimants free of charge with any evidence relied upon in deciding the appeal that was not relied on in making the initial denial of the claim. This is a third-party disclosure requirement. Individuals appealing a denial of a claim should be able to respond to any new evidence the plan or issuer relies on in the appeal, and this disclosure requirement is essential so that the claimant knows of the new evidence.

Current Actions: There is no change to the regulation or the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,769,264.

Estimated Total Annual Burden Hours: 2,271.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 16, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–04272 Filed 3–1–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to a processing error, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Wednesday, March 10, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, March 10, 2021, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: February 24, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–04206 Filed 3–1–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. Due to a processing error, we will not be able to meet the 15-calendar notice threshold, but this meeting will still be open. This meeting will still be held via teleconference.

DATES: The meeting will be held Tuesday, March 9, 2021.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 336–690–6217.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, March 9, 2021, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more

information please contact Cedric Jeans at 1–888–912–1227 or 336–690–6217, or write TAP Office, 4905 Koger Boulevard, Greensboro, NC 27407–2734 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: February 24, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–04205 Filed 3–1–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Price Increase for United States Mint Numismatic Product

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing new pricing for the United States Mint numismatic product in accordance with the table shown in Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Angela Hicks, Marketing Specialist, Sales and Marketing Directorate; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7750.

SUPPLEMENTARY INFORMATION:

Product	2021 retail price
United States Mint Coin Roll Collector Box	$21.50

Authority: 31 U.S.C. 5111, 5112, 5136, & 9701.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2021–04203 Filed 3–1–21; 8:45 am]

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