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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0361; Special Conditions No. 25–666–SC]

Special Conditions: Bombardier Aerospace Inc., Model CL–600–2E25 Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comment.

SUMMARY: These special conditions are issued for non-rechargeable lithium battery installations on the Bombardier Aerospace Inc. (Bombardier) Model CL–600–2E25 airplane. Non-rechargeable lithium batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Bombardier on May 9, 2017. We must receive your comments by June 23, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0361 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

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

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

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

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

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

Comments Invited

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

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

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

Background

Bombardier holds type certificate no. A21EA, which provides the certification basis for the CL–600–2E25 airplane. The CL–600–2E25 is a twin engine, transport category airplane with a passenger seating capacity of 104 and a maximum takeoff weight of 90,000 pounds.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the CL–600–2E25 airplane. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Bombardier must show that the CL–600–2E25 airplane meets the applicable provisions of the regulations listed in type certificate no. A21EA or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the CL–600–2E25 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the CL–600–2E25 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Feature

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

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

Discussion

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

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

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

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

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

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

- *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.
- *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating

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

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

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

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

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

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

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

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

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

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

Applicability

These special conditions are applicable to the CL–600–2E25 airplane. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

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

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

Conclusion

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

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model CL–600–2E25 airplane.

Non-Rechargeable Lithium Battery Installations

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

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

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

Issued in Renton, Washington, on April 24, 2017.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09319 Filed 5–8–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0364; Special Conditions No. 25–667–SC]

Special Conditions: Gulfstream Aerospace LP, Model Gulfstream 200 Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comment.

SUMMARY: These special conditions are issued for non-rechargeable lithium battery installations on the Gulfstream Aerospace LP (GALP) Model Gulfstream 200 airplane, as modified by Gulfstream Aerospace Corporation (Gulfstream). Non-rechargeable lithium batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Gulfstream Aerospace LP on May 9, 2017. We must receive your comments by June 23, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0364 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

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

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

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

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

Alaskan operations will outweigh the battery fire risk.

Comments Invited

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

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

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

Background

Gulfstream periodically applies to amend its supplemental type certificate that installs an executive passenger cabin interior, which includes non-rechargeable lithium batteries, in the GALP Model Gulfstream 200 airplane. The GALP Model Gulfstream 200, approved under type certificate no. A53NM, is a twin engine, transport category airplane with a passenger seating capacity of 19 and a maximum takeoff weight of 34,850 to 35,650 pounds, depending on the specific design.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the GALP Model Gulfstream 200 airplane, as modified by Gulfstream. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Gulfstream must show that the change and areas affected by the change on the GALP Model Gulfstream 200 airplane meet the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. Earlier amended regulations may not precede those listed in type certificate no. A53NM or, for amended supplemental type certificate projects, those listed in the supplemental type certificate. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the GALP Model Gulfstream 200 airplane, as modified by Gulfstream, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the GALP Model Gulfstream 200 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Feature

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

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

Discussion

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

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

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

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

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

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

- *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or

lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.

• *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

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

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

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

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

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

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

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

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

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

Applicability

These special conditions are applicable to the GALP Model Gulfstream 200 airplane, as modified by Gulfstream. Should Gulfstream apply at a later date for a supplemental type certificate to modify any other model included on type certificate no. A53NM to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

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

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

Conclusion

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

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the GALP Model Gulfstream 200 airplane modified by Gulfstream.

Non-Rechargeable Lithium Battery Installations

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

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

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

Issued in Renton, Washington, on April 24, 2017.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09320 Filed 5–8–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9569; Directorate Identifier 2016–NM–052–AD; Amendment 39–18865; AD 2017–09–03]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–03–12 for all Dassault Aviation Model MYSTERE–FALCON 50 airplanes. AD 2013–03–12 required revising the maintenance program to incorporate certain maintenance requirements and airworthiness limitations. This AD requires revising the maintenance or inspection program, as applicable, to incorporate new or revised maintenance requirements and airworthiness limitations. This AD was prompted by issuance of a revision to the airplane maintenance manual (AMM) that introduces new or more restrictive maintenance requirements and/or airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 13, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 13, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 19, 2013 (78 FR 9798, February 12, 2013).

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9569.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9569; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–03–12, Amendment 39–17347 (78 FR 9798, February 12, 2013) (''AD 2013–03–12''). AD 2013–03–12 applied to all Dassault Aviation Model MYSTERE–FALCON 50 airplanes. The NPRM published in the **Federal Register** on January 6, 2017 (82 FR 1621). The NPRM was prompted by the issuance of a revision to the AMM that introduced new or more restrictive maintenance requirements and/or airworthiness limitations. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate new or revised maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0067, dated April 7, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE–FALCON 50 airplanes. The MCAI states:

> The airworthiness limitations and maintenance requirements for the Mystère Falcon 50 type design are included in DA Mystère Falcon 50 Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by EASA.
>
> Failure to implement these limitations or accomplish these tasks could result in an unsafe condition [reduced structural integrity of the airplane]. Consequently, compliance with these actions has been identified as mandatory for continued airworthiness.
>
> Consequently, EASA issued AD 2011–0246 [which corresponds to FAA AD 2013–03–12] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in DA Mystère Falcon 50 AMM chapter 5–40 Revision 21.
>
> Since that [EASA] AD was issued, DA issued revision 23 of the Mystere Falcon 50 AMM chapter 5–40 (hereafter referred to as 'the ALS' in this [EASA] AD), which introduces new and more restrictive maintenance requirements and/or airworthiness limitations.
>
> The ALS introduces, among others, the following changes:
>
> —Addition of more detailed data regarding SSIP program,
>
> —Task 53–50–35–220–802 ''Detailed inspection of the frame 35 upper and lower sections'', replacing Task 53–50–35–220–801,
>
> —Task 55–00–00–270–801 ''Ultrasonic inspection for stress corrosion in stabilizer hinges'', replacing Task 55–00–00–250–801, and
>
> —Task 78–31–00–250–802 ''Special detailed inspection (fluorescent penetrant) of thrust reverser door hinge fittings'', replacing Task 78–31–00–250–801.
>
> For the reasons described above, this [EASA] AD, retains the requirements of EASA AD 2011–0246, which is superseded, and requires the implementation of the maintenance tasks and airworthiness limitations, as specified in the ALS.

This AD requires revising the maintenance or inspection program, as

applicable, to incorporate new or revised maintenance requirements and airworthiness limitations. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9569.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting 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

We reviewed Chapter 5–40, Airworthiness Limitations, of the Erratum to Dassault Falcon 50/50EX Maintenance Manual, Revision 23, dated July 2015. This service information describes maintenance requirements and/or airworthiness limitations. 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.

Costs of Compliance

We estimate that this AD affects 249 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance program revision (retained action from AD 2013–03–12).	1 work-hour × $85 per hour = $85.	$0	$85	$21,165
Maintenance or inspection program revision (new action)	1 work-hour × $85 per hour = $85.	0	85	21,165

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–09–03 Dassault Aviation: Amendment 39–18865; Docket No. FAA–2016–9569; Directorate Identifier 2016–NM–052–AD.

(a) Effective Date

This AD is effective June 13, 2017.

(b) Affected ADs

(1) This AD replaces AD 2013–03–12, Amendment 39–17347 (78 FR 9798, February 12, 2013) (''AD 2013–03–12'').

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05''), and AD 2012–02–18, Amendment 39–16941 (77 FR 12175, February 29, 2012) (''AD–2012–02–18'').

(c) Applicability

This AD applies to Dassault Aviation Model MYSTERE–FALCON 50 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic inspections.

(e) Reason

This AD was prompted by a manufacturer revision to the airplane maintenance manual (AMM) that introduces new or more restrictive maintenance requirements and/or airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–03–12, with no changes. Within 30 days after March 19, 2013 (the effective date of AD 2013–03–12): Revise the maintenance program to incorporate all airworthiness limitations and maintenance tasks specified in Section 05–40/00,

Airworthiness Limitations, of Chapter 5–40, Airworthiness Limitations, of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011. The initial compliance times for the tasks are at the applicable times specified in Section 05–40/00, Airworthiness Limitations, of Chapter 5–40, Airworthiness Limitations, of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011, or within 30 days after March 19, 2013, whichever occurs later.

(h) Retained Provision Regarding Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs), With New Exception

This paragraph restates the requirements of paragraph (h) of AD 2013–03–12, with a new exception. Except as required by paragraph (i) of this AD: After accomplishing the revisions required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used other than those specified in Section 05–40/00, Airworthiness Limitations, of Chapter 5–40, Airworthiness Limitations, of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011, unless the actions, intervals, and/or CDCCLs are approved as an alternative methods of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate airworthiness limitations, maintenance tasks, and associated thresholds and intervals specified in Section 05–40/00, Airworthiness Limitations, of Chapter 5–40, Airworthiness Limitations, of the Erratum to Dassault Falcon 50/50EX Maintenance Manual, Revision 23, dated July 2015. The initial compliance times for the tasks are at the applicable times specified in Section 05–40/00, Airworthiness Limitations, of Chapter 5–40, Airworthiness Limitations, of the Erratum to Dassault Falcon 50/50EX Maintenance Manual, Revision 23, dated July 2015, or within 30 days after the effective date of this AD, whichever occurs later. Accomplishing the revision of the maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) New Provision Regarding Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in paragraph (l)(1) of this AD.

(k) Terminating Action for Certain ADs

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates all requirements of AD 2010–26–05 and AD 2012–02–18 for the Dassault Aviation Model MYSTERE–FALCON 50 airplanes specified in those ADs.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0067, dated April 7, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9569.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@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 (n)(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 as of June 13, 2017.

(i) Chapter 5–40, Airworthiness Limitations, of the Erratum to Dassault Falcon 50/50EX Maintenance Manual, Revision 23, dated July 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on March 19, 2013 (78 FR 9798, February 12, 2013).

(i) Section 05–40/00, Airworthiness Limitations, of Chapter 5–40, Airworthiness Limitations, of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011.

(ii) Reserved.

(5) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(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, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on April 24, 2017.

Paul Bernado,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–08829 Filed 5–8–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9303; Directorate Identifier 2016–NM–093–AD; Amendment 39–18875; AD 2017–10–01]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Dassault Aviation Model FAN JET FALCON airplanes; all Model FAN JET FALCON SERIES C, D, E, F, and G airplanes; and all Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. This AD was prompted by a determination that inspections for discrepancies of the fuselage bulkhead are necessary. This AD requires repetitive inspections for discrepancies of the fuselage bulkhead, and repair if

necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 13, 2017.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9303; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1137; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model FAN JET FALCON airplanes; all Model FAN JET FALCON SERIES C, D, E, F, and G airplanes; and all Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The NPRM published in the **Federal Register** on November 1, 2016 (81 FR 75757) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0096, dated May 19, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FAN JET FALCON airplanes; all Model FAN JET FALCON SERIES C, D, E, F, and G airplanes; and all Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The MCAI states:

> A detailed inspection (DET) of the fuselage bulkhead at frame (FR) 33 is established through a subset of inspection/check maintenance procedure referenced in the applicable aircraft maintenance manual (AMM), task 53–10–0–6 ''MAIN FRAME—INSPECTION/CHECK'', with periodicity established in Chapter 5–10, at every C-Check. Failure to accomplish this DET could lead to deterioration of the affected structure.
>
> This condition, if not detected and corrected, could lead to bulkhead failure, possibly resulting in a rapid depressurization of the aeroplane and consequent injury to occupants.
>
> For the reasons described above, this [EASA] AD requires repetitive DET of the bulkhead at FR33 [for discrepancies, such as buckling, deformations, cracks, loose countersinks, scratches, dents, and corrosion], and depending on findings, repair of the affected structure.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9303.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response to the single commenter.

Request To Reduce Compliance Time

The commenter, Mark Reiner, asked that the compliance time for the repetitive inspections required by paragraph (g) of the proposed AD be reduced from 5,000 to 2,500 flight cycles. The commenter reasoned that since so many airplanes are flying around the world and accumulating numerous flight cycles, the chances of problems occurring on an airplane are greatly increased.

We do not agree with the commenter's request. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation for an appropriate compliance time, and the practical aspect of accomplishing the inspections within an interval of time that corresponds to the typical scheduled maintenance for the majority of affected operators. Further, we determined that the compliance time recommended by the manufacturer and EASA, and the time required for the rulemaking process provide an acceptable level of safety. Therefore, we have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

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

Costs of Compliance

We estimate that this AD affects 133 airplanes of U.S. registry.

We also estimate that it takes about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $90,440, or $680 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–10–01 Dassault Aviation: Amendment 39–18875; Docket No. FAA–2016–9303; Directorate Identifier 2016–NM–093–AD.

(a) Effective Date

This AD is effective June 13, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Dassault Aviation airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes.

(2) Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that inspections for discrepancies of the fuselage bulkhead at frame (FR) 33 are necessary. We are issuing this AD to detect and correct discrepancies of the fuselage bulkhead; such discrepancies could result in the deterioration and subsequent failure of the bulkhead, which could result in rapid decompression of the airplane and consequent injury to occupants.

(f) Compliance

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

(g) Repetitive Inspections

Before exceeding 5,000 total flight cycles since first flight of the airplane, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Do a detailed inspection for discrepancies of the fuselage bulkhead at FR 33 using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(h) Repair

If any discrepancy is found during any inspection required by paragraph (g) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature. Repair of an airplane as required by this paragraph does not constitute terminating action for the repetitive actions required by paragraph (g) of this AD, unless specified otherwise in the repair instructions.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1137; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0096, dated May 19, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9303.

(k) Material Incorporated by Reference

None.

Issued in Renton, Washington, on May 1, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09323 Filed 5–8–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2006–24981; Amdt. Nos. 61–138A, 91–344A, and 135–134A]

RIN 2120–AK63

MU–2B Series Airplane Training Requirements Update; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: The FAA is correcting a final rule published on September 7, 2016. In that rule, the FAA amended its regulations to relocate and update the content of SFAR No. 108 to the newly created subpart N of part 91 in order to improve the safety of operating the Mitsubishi Heavy Industries (MHI) MU–2B series airplane. This document corrects two errors in the codified text of the final rule.

DATES: Effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Joseph Hemler, Commercial Operations Branch, Flight Standards Service, AFS–820, Federal Aviation Administration, 55 M Street SE., 8th floor, Washington, DC 20003–3522; telephone (202) 267–1100; email *joseph.k.hemler-jr@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2016, the FAA published a final rule entitled, ''MU–2B Series Airplane Training Requirements Update'' (81 FR 61583). In that final rule, the FAA amended its regulations to relocate and update the content of SFAR No. 108 to the newly created subpart N of part 91 in order to improve the safety of operating the MHI MU–2B series airplane. The FAA relocated the training program from the SFAR No. 108 appendices to advisory material in order to allow the FAA to update policy while ensuring significant training adjustments still go through notice-and-comment rulemaking. The FAA also corrected and updated several inaccurate maneuver profiles to reflect

current FAA training philosophy and added new FAA procedures not previously part of the MU–2B training under SFAR No. 108. The final rule required all MU–2B training programs to meet the requirements of subpart N of part 91 and to be approved by the FAA to ensure safety is maintained.

After the final rule was published, the FAA discovered an error in the regulatory text of the rule. The FAA was also notified that the publisher of the MHI MU–2B Checklists, which were incorporated by reference in the final rule, changed on March 31, 2017. Because the publisher's contact information is codified in § 91.1721(b), the regulatory text of paragraph (b) was incorrect as of March 31, 2017. These errors, and the corresponding corrections, are as follows:

Corrections

1. Takeoff and Landing Currency Requirements in § 91.1715(a)

Section 91.1715(a) currently reads, in part, ''takeoff landing currency requirements.'' The FAA is adding the word ''and'' to correct an inadvertent omission in the regulation.

2. Publisher's Contact Information in § 91.1721(b)

The MHI MU–2B Cockpit Checklists are incorporated by reference in § 91.1721. Section 91.1721(b) contains the contact information of the company who publishes these checklists. When the final rule was published, Turbine Aircraft Services, Inc. (TAS) was contracted by Mitsubishi Heavy Industries America, Inc. (MHIA) to print and distribute the MU–2B Cockpit Checklists. Therefore, § 91.1721(b) currently contains TAS's contact information. The FAA was notified, however, that beginning on March 31, 2017, MHIA will be responsible for printing and distributing the MU–2B Cockpit Checklists. This correction document updates the contact information in § 91.1721(b) to reflect the new publisher.

Because these amendments are technical in nature and result in no substantive changes, the FAA finds that the notice and public procedures under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. 553(d)(3) to make the amendments effective in less than 30 days.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Freight, Incorporation by reference, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration corrects chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Revise paragraph (a) of § 91.1715 to read as follows:

§ 91.1715 Currency requirements and flight review.

(a) The takeoff and landing currency requirements of § 61.57 of this chapter must be maintained in the Mitsubishi MU–2B series airplane. Takeoff and landings in other multiengine airplanes do not meet the takeoff and landing currency requirements for the Mitsubishi MU–2B series plane. Takeoff and landings in either the short-body or long-body Mitsubishi MU–2B model airplane may be credited toward takeoff and landing currency for both Mitsubishi MU–2B model groups.

* * * * *

■ 3. In § 91.1721, revise the introductory text of paragraph (b) to read as follows:

§ 91.1721 Incorporation by reference.

* * * * *

(b) Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 530, Addison, TX 75001.

* * * * *

Issued under authority provided by (consult AGC) 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on May 2, 2017.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2017–09316 Filed 5–8–17; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 279

[Release No. IA–4698]

Technical Amendments to Form ADV and Form ADV–W

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (the ''Commission'' or ''SEC'') is making technical amendments to Form ADV under the Investment Advisers Act of 1940 (''Advisers Act'') to reflect the enactment of a Wyoming state law regulating investment advisers. Form ADV is the form advisers use to register with the Commission and the state securities regulatory authorities. The Commission is also making similar amendments to Form ADV–W, the form advisers use to withdraw from registration with the Commission or the states.

DATES: Effective July 1, 2017.

FOR FURTHER INFORMATION CONTACT: Bridget D. Farrell, Senior Counsel or Melissa Roverts Harke, Senior Special Counsel at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting technical amendments to Form ADV [17 CFR 279.1] and Form ADV–W [17 CFR 279.2] under the Advisers Act to correct and update what will be outdated references in those forms to the state of Wyoming due to the enactment by Wyoming of legislation regulating investment advisers, which will be effective as of July 1, 2017.[1]

An investment adviser must register with the Commission unless it is prohibited from registering under section 203A of the Advisers Act or relies on an exemption from registration under section 203.[2] Under section 203A(a)(1) of the Advisers Act, an adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the adviser has assets under management of not less than $25 million, or advises an investment company registered under the Investment Company Act of 1940.[3] Under section 203A(a)(2) of the Advisers Act, an investment adviser with between $25 million and $100 million of assets under management (''mid-sized adviser'') is also prohibited from registering with the Commission if

[1] Wyoming Uniform Securities Act, Wyo. Stat. Ann. §§ 17–4–101, 17–4–403 through 17–4–412 (effective July 1, 2017) (''Wyoming Securities Act'').

[2] 15 U.S.C. 80b–3a; 15 U.S.C. 80b–3.

[3] 15 U.S.C. 80b–3a(a)(1).

that adviser is required to be registered as an investment adviser in the state in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser.[4] These provisions make the states the primary regulators of smaller advisers and the Commission the primary regulator of larger advisers.[5] However, all investment advisers—regardless of the amount of assets they manage—must register with the Commission if their principal office and place of business is located in a state that has not enacted a statute regulating advisers.[6]

Recently, the state of Wyoming enacted a statute regulating investment advisers that will become effective July 1, 2017.[7] Further, our staff has contacted the state securities authority for the state of Wyoming, the Wyoming Secretary of State Compliance Division, which has advised our staff that mid-sized advisers with a principal office and place of business in Wyoming will be required to be registered with the state and will be subject to examination. As a consequence, by operation of the Wyoming statute, as of July 1, 2017, an investment adviser with a principal office and place of business in Wyoming may not register with the Commission unless it has greater than $100 million in assets under management, advises a registered investment company, or is eligible to rely on one of the exemptions from the prohibition on registration contained in rule 203A–2.[8]

As a result of this Wyoming statute, the Commission is making technical amendments to Form ADV as well as to Form ADV–W to reflect the addition of the state of Wyoming to the group of states with investment adviser regulation. Specifically, any adviser filing an initial Form ADV or an amendment to an existing Form ADV on or after July 1, 2017 will not be able to select Item 2.A.(3) of Form ADV, which currently indicates having a principal office and place of business in Wyoming (which does not regulate advisers) as a basis for Commission registration. Further, a checkbox for ''WY'' will be added to Item 2.C. of Form ADV to enable state notice filings for Commission-registered advisers. Finally, a checkbox for ''WY'' will also be added to section (b) of Form ADV–W, concerning withdrawals from state investment adviser registration.[9] On October 1, 2017, Item 2.A.(3) will be redesignated as ''Reserved.'' The same change will be made to Schedule R, Section 2.A.(3) for relying advisers.[10]

Procedural and Other Matters

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when the agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [11] The Commission is adopting technical amendments to correct and eliminate what will automatically become outdated provisions in Part 1A of Form ADV and Form ADV–W as a result of legislation enacted by the state of Wyoming, which will be effective July 1, 2017. These amendments are therefore ministerial in nature. Accordingly, the Commission finds good cause that publishing the amendments for comment is unnecessary.[12]

We do not believe that these ministerial amendments to Forms ADV and ADV–W, to reflect the addition of Wyoming to the group of states with investment adviser regulation, make any substantive modifications to any existing collection of information requirements or impose any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[13] Accordingly, we are not revising any burden and cost estimates in connection with these amendments.[14]

Economic Analysis

As a result of the Wyoming statute, and its interaction with the Advisers Act and rules thereunder, small and mid-sized investment advisers who have a principal office and place of business in Wyoming, and cannot assert another basis for continuing to remain registered with the Commission, will be required to register with the Wyoming Secretary of State, deregister with the Commission, and be subject to Wyoming oversight as of July 1, 2017.[15] This transition of these Commission-registered investment advisers to Wyoming oversight is a result of a Wyoming statute and therefore does not necessitate additional rule changes by the Commission, but will cause Forms ADV and ADV–W to contain outdated provisions that reflect the prior status of Wyoming investment advisers who had been able to register with the Commission before July 1, 2017. This rulemaking updates those forms accordingly. In considering the economic effects of this rulemaking, we primarily focus on any effects that changes to the forms might have on Commission-registered advisers filing Form ADV and ADV–W. However, we recognize that we are making these changes to the forms in light of the

[4] 15 U.S.C. 80b–3*a(a)(2)*. Section 203A(a)(2) also provides exceptions to the prohibition on Commission registration of state-registered mid-sized advisers for advisers to registered investment companies or business development companies under the Investment Company Act of 1940 and advisers that would otherwise be required to register with 15 or more states.

[5] *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (July 19, 2011)].

[6] *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633, section I (May 15, 1997) [62 FR 28112 (May 22, 1997)].

[7] Wyoming Securities Act §§ 17–4–403–412.

[8] Absent eligibility for Commission registration, these advisers are subject to the registration provisions of Wyoming law. In addition, advisers ineligible for Commission registration that have their principal office and place of business in Wyoming may be required to register in one or more other states, subject to the laws of those states.

[9] Item 2.A.(3) on Form ADV will be disabled as a basis for registration in the Investment Adviser Registration Depository (''IARD'') on July 1, 2017, when the Wyoming statute becomes effective. Additionally, on that date, IARD will be programmed to accept Wyoming notice filings, and to enable withdrawal from Wyoming registration. However, IARD will not be programmed to replace the text in Item 2.A.(3) with ''Reserved'' or to make the amendments to Schedule R discussed in this paragraph until October 1, 2017, in order to implement those amendments concurrently with the unrelated amendments to the form adopted recently. *See* Form ADV and Investment Advisers Act Rules, Investment Advisers Act Release No. 4509 (Aug. 25, 2016) (''Release 4509'') [81 FR 60418 (Sept. 1, 2016)] (compliance date October 1, 2017).

[10] Schedule R is a schedule to Form ADV that may be used by private fund advisers that are registered with the Commission and operate a single advisory business through multiple legal entities to file a single registration form, subject to conditions. *See* Release 4509.

[11] 5 U.S.C. 553(b).

[12] The amendments also do not require analysis under the Regulatory Flexibility Act (''RFA''). *See* 5 U.S.C. 601(2) (for purposes of RFA analysis, the term ''rule'' generally means any rule for which the agency publishes a general notice of proposed rulemaking).

[13] 44 U.S.C. 3501 *et seq.* As noted in the Economic Analysis below, we recognize that approximately 35 investment advisers would likely be affected by the new Wyoming state law. Thus, while the enactment of the Wyoming state law may impact a small number of Commission-registered small and mid-sized investment advisers that have a principal office and place of business in Wyoming, we believe that the amendments adopted today do not impose substantive new burdens as they may marginally reduce the overall population of respondents and therefore will not affect the current overall burden estimates for affected forms.

[14] The most recent Paperwork Reduction Act analysis for Form ADV, which is pending approval by the Office of Management and Budget (OMB Control No. 3235–0049), is based upon the number of registered advisers and exempt reporting advisers as of May 1, 2016.

[15] Specifically, for small investment advisers, the impact of the transition to state oversight is the result of the interaction of the Wyoming statute with section 203A(a) and our 1997 rule, *see* supra note 6; for mid-sized investment advisers, it is the result of section 203A(a) as amended by Section 410 of the Dodd-Frank Act, and our 2011 rule, *see* supra note 5.

broader transition of certain Wyoming investment advisers to Wyoming oversight—a transition that will entail a set of economic effects separate from the changes to the forms—and we briefly discuss the effects of this broader transition.

As of February 1, 2017, there are 40 investment advisers that selected Item 2.A.(3) of Form ADV, indicating that the adviser has a principal office and place of business in the state of Wyoming. Of these 40 investment advisers, four advisers have identified themselves as those with regulatory assets under management of $100 million or more by checking Item 2.A.(1) on Form ADV and will continue to be required to register with the Commission, regardless of the change in the statute enacted by the state of Wyoming. However, based on regulatory assets under management (Item 5.F.(2)(c) on Form ADV), there is one additional adviser with regulatory assets under management of $100 million or more that did not identify itself by Item 2.A.(1) that we therefore anticipate would remain registered with the Commission. Only one adviser currently selecting Item 2.A.(3) also selected Item 2.A.(2) on Form ADV as of February 1, 2017, indicating that it is a ''mid-sized adviser'' with regulatory assets under management of more than $25 million but less than $100 million; however, based on regulatory assets under management, we identified seven additional mid-sized advisers that did not select Item 2.A.(2). We anticipate these eight advisers would need to change their registrations to state registration, absent an alternative basis for remaining registered with the Commission. The remaining 27 advisers report regulatory assets under management of less than $25 million and checked only Item 2.A.(3) as a basis for registration with the Commission and would need to change their registrations to state registration absent an alternative basis for remaining registered with the Commission.

Thus, there are approximately 35 advisers that have not indicated an alternative basis for remaining registered with the Commission after the Wyoming statute becomes effective on July 1, 2017,[16] and that we therefore assume will be required to register with the state of Wyoming and withdraw from registration with the Commission.[17] These 35 investment advisers collectively reported $530 million in regulatory assets under management as of February 1, 2017.

The Commission has analyzed the effects of the changes to the forms as a result of the Wyoming legislation and anticipates only nominal benefits or costs, if any, to arise from the technical amendments to Form ADV and Form ADV–W to reflect the change in Wyoming law. The removal of Item 2.A.(3) from Form ADV will prevent investment advisers from improperly checking the box previously used to identify investment advisers from the state of Wyoming, making clear to such advisers that they are no longer eligible to register with the Commission on the basis of having a principal office and place of business in Wyoming. Correspondingly, amendments to Schedule R of Form ADV to remove Item 2.A.(3) from the Schedule will have effects for relying advisers subject to umbrella registration similar to the effects for advisers that do not use Schedule R but respond to Item 2.A.(3) of Form ADV. Further, Item 2.C of Form ADV will now be amended to include Wyoming check boxes for Commission-registered advisers to send notice filings to Wyoming. Finally, Form ADV–W will be revised to allow Wyoming registrants to withdraw their registration with Wyoming as necessary.

As Item 2.A.(3) would not be relevant to investment advisers without a principal office and place of business in the state of Wyoming, we do not believe that changes to the forms will impose any costs on these investment advisers to update their systems or otherwise review or understand the impact of the changes.[18] While some advisers that remain registered with the Commission may need to check the notice filing box to send notice filings to Wyoming, we anticipate that the burden to check the box will be nominal, if any. The changes to the forms also do not directly impose any costs on the advisers who must change their registration as a result of the Wyoming statute. The Commission further anticipates that these technical amendments to Form ADV and Form ADV–W will have minimal, if any, effects on efficiency, competition, or capital formation because the amendments reflect only ministerial changes to Forms ADV and ADV–W.

Separately, we recognize that approximately 35 investment advisers will be required to transition to Wyoming oversight as a self-executing result of the Wyoming statute's interaction with our existing statutes and rules. We acknowledge that this transition resulting from the Wyoming statute will have economic effects on these entities. In our 2011 rule implementing Section 410 of the Dodd-Frank Act, which transitioned mid-sized investment advisers to state oversight, we discussed certain economic effects that result from transitioning a class of advisers from federal to state oversight.[19] These economic effects include costs incurred by transitioning advisers to make the necessary filings to register with the state and to withdraw from Commission registration,[20] and to comply with the state's ongoing reporting and inspections regime. Similarly, Wyoming advisers will be required to calculate and monitor assets under management going forward to determine if Commission registration (or deregistration, for those currently exceeding the threshold) would be required. At the same time, these advisers transitioning as a result of the Wyoming statute may experience cost savings associated with no longer being subject to the Commission's regulatory regime for registered investment advisers. Because the amendments affect only 35 small to mid-sized advisers that have principal offices and a place of business in the state of Wyoming out of a total 12,176 investment advisers currently filing Form ADV, the Commission does not anticipate that, taken together, these changes would have a significant effect on efficiency, competition, or capital formation.

Statutory Authority

The Commission is adopting technical amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a)

[16] We arrive at 35 mid-sized and small advisers by two means. First, we take the 40 Wyoming advisers and subtract the five advisers who either have checked the large-size box (Item 2.A.(1)) or who have assets under management that would seem to permit them to check Item 2.A.(1). Alternatively, we sum together the adviser who checked the mid-sized box (Item 2.A.(2)) together with firms that have assets under management that would appear to make them mid-sized (seven), as well as those that have assets under management that would seem to make them small advisers (27), none of which have checked any additional box that would constitute an alternative basis for remaining registered.

[17] As these 35 small and mid-sized advisers may have an alternative basis for remaining registered with the Commission (*e.g.,* they serve as an adviser to a registered investment company or business development company, or are a pension consultant), 35 is likely to be an upper bound; however, we assume that all 35 advisers will be required to shift for purposes of understanding the possible magnitude of the change.

[18] To the extent that filers have fewer questions to research when completing the form, this removal of Item 2.A.(3) may reduce the costs associated with filing activities for investment advisers with a principal office and place of business in the state of Wyoming.

[19] *See* supra note 5.

[20] ''The state'' here principally refers to Wyoming. We recognize that advisers transitioning to Wyoming registration may be required to register with additional states as well, which may impose additional costs on such advisers.

and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

The Commission is adopting technical amendments to Form ADV–W (17 CFR 279.2) under the authority set forth in sections 203(h), 204 and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(h), 80b–4, and 80b–11)).

List of Subjects in 17 CFR Part 279

Reporting and recordkeeping requirements; Securities.

Text of Rule and Form Amendments

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

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

§ 279.1 [Amended]

■ 2. Form ADV (referenced in § 279.1) is amended by:

■ a. Removing the phrase ''have your *principal office and place of business* in Wyoming (which does not regulate advisers);'' from Part 1A, Item 2.A.(3) and adding in its place ''Reserved'';

■ b. Adding ''□ WY'' after ''□ WI'' in the table of Part 1A, Item 2.C.; and

■ c. Removing the phrase ''have your *principal office and place of business* in Wyoming (which does not regulate advisers);'' from Part 1A, Schedule R, Section 2.A.(3) and adding in its place ''Reserved''.

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

§ 279.2 [Amended]

■ 3. Form ADV–W (referenced in § 279.2) is amended by adding ''□ WY'' after ''□ WI'' in the table in paragraph (b) of the Status section.

Note: The text of Form ADV–W does not and the amendments will not appear in the Code of Federal Regulations.

By the Commission.

Dated: May 4, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–09331 Filed 5–8–17; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 612 and 686

[Docket ID ED–2014–OPE–0057]

RIN 1840–AD07

Teacher Preparation Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final rule; CRA Revocation.

SUMMARY: Under the Congressional Review Act, Congress has passed, and the President has signed, a resolution of disapproval of the Teacher Preparation Issues final regulations that were published on October 31, 2016. Pursuant to the resolution, the Department of Education (Department) is removing applicable regulations from the Code of Federal Regulations.

DATES: This action is effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: Sophia McArdle, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW., Room 6W256, Washington, DC 20202. Telephone: (202) 453–6318 or by email: *sophia.mcardle@ed.gov*.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 31, 2016, the Department published the teacher preparation issues notice of final regulations (81 FR 75494). The regulations in 34 CFR part 612 were effective November 30, 2016. The amendments to part 686 were to be effective on July 1, 2017, except for amendatory instructions 4.A., 4.B., 4.C.iv., 4.C.x., and 4.C.xi., amending 34 CFR 686.2(d) and (e), which were to be effective July 1, 2021. Congress subsequently passed a resolution of disapproval of the rule, and President Trump signed the resolution into law as Public Law 115–14 on March 27, 2017. Accordingly, the Department is hereby removing part 612 of the teacher preparation issues final regulations from the Code of Federal Regulations. The amendments to part 686 were not effective, and therefore, were never part of the Code of Federal Regulations. The Department is removing the instructions amending part 686 from the rule that published October 31, 2016.

List of Subjects in 34 CFR Part 612

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: May 4, 2017.

Betsy DeVos,

Secretary of Education.

Revocation of Amendatory Instructions

For the reasons discussed in the preamble, and under the authority of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and Public Law 115–14 (March 27, 2017), the Secretary revokes the following amendatory instructions from FR Doc. 2016–24856, published in the issue of Monday, October 31, 2016 (81 FR 75494):

§§ 686.1, 686.2, 686.3, 686.11, 686.12, 686.32, 686.37, 686.40, 686.42, and 686.43 [Revocation of instructions]

■ 1. On pages 75619 through 75622, remove amendatory instructions 2 through 12.

Amendment to 34 CFR Chapter VI

For the reasons discussed in the preamble, and under the authority of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and Public Law 115–14 (March 27, 2017), the Secretary also amends chapter VI of title 34 of the Code of Federal Regulations as follows:

PART 612—[Removed]

■ 1. Remove part 612.

[FR Doc. 2017–09351 Filed 5–8–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160810719–7353–02]

RIN 0648–BG29

Amendments to the Reef Fish, Spiny Lobster, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement measures described in Amendment 8 to the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI) (Reef Fish FMP), Amendment 7 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP), and Amendment 6 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP), as prepared and submitted by the Caribbean Fishery Management Council (Council). This final rule refers to these amendments, in combination, as the Accountability Measure (AM) Timing Amendment. This final rule to implement the AM Timing Amendment modifies the date for the implementation of AM-based closures for all species and species groups managed by the Council under the subject FMPs. The purpose of the AM Timing Amendment and this final rule is to minimize, to the extent practicable, the adverse socio-economic impacts of AM-based closures, while constraining catch levels to the applicable annual catch limits (ACLs) and preventing overfishing.

DATES: This final rule is effective June 8, 2017.

ADDRESSES: Electronic copies of the AM Timing Amendment, which includes an environmental assessment (EA), a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/index.html.*

FOR FURTHER INFORMATION CONTACT: María del Mar López, telephone: 727–824–5305; email: *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the U.S. Caribbean exclusive economic zone (EEZ), the reef fish, spiny lobster, and corals and reef associated plants and invertebrates (corals) fisheries are managed under their respective FMPs. The FMPs were prepared by the Council and are implemented 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.*).

On January 5, 2017, NMFS published a notice of availability for the AM Timing Amendment and requested public comment (82 FR 1308). On February 10, 2017, NMFS published a proposed rule for the AM Timing Amendment and requested public comment (82 FR 10324). The proposed rule and the AM Timing Amendment outline the rationale for the actions contained in this final rule. A summary of the management measures described in the AM Timing Amendment and implemented by this final rule is provided below.

Management Measure Contained in This Final Rule

This final rule modifies the date for implementation of an AM-based closure in the event of an ACL overage for a species or species group managed by the Council in Puerto Rico, St. Thomas/St. John, and St. Croix under the Reef Fish, Coral, and Spiny Lobster FMPs. AM-based closures occur in the year following any overage triggering implementation of the AM. Specifically, an AM-based closure will be implemented from September 30 of the closure year backward, toward the beginning of the fishing year, for the number of days necessary to achieve the reduction in landings required to ensure landings do not exceed the applicable ACL. If the length of the required fishing season reduction exceeds the period of January 1 through September 30, any additional fishing season reduction required will be applied from October 1 forward, toward the end of the fishing year (December 31). This final rule to implement the AM Timing Amendment is expected to minimize adverse socio-economic effects from the implementation of AMs, while still helping to ensure that AM-based closures constrain harvest to the ACL and prevent overfishing.

The FMP for the Queen Conch Resources of Puerto Rico and the USVI is not included in the AM Timing Amendment because queen conch harvest is managed with an in-season closure when the ACL is reached or projected to be reached, rather than a post-season reduction in the fishing year.

Additional Action Contained in the AM Timing Amendment but Not Codified Through This Final Rule

In addition to the measure discussed above, the AM Timing Amendment requires that the Council revisit the practice of using September 30 as the end date for AM-based closures no longer than 2 years from the implementation of the AM Timing Amendment and no longer than every 2 years thereafter. Any formal review associated with revisiting the selected date would allow NMFS and the Council to specifically consider new information. Thus, any corresponding revisions would be expected to result in additional positive social and economic effects.

Comments and Responses

NMFS received a total of two comment submissions on the proposed rule and the AM Timing Amendment; one from a group of individuals and one from a Federal agency. The Federal agency stated that it had no comment on the proposed rule or the AM Timing Amendment. The other comment as well as NMFS' response, is summarized below.

Comment 1: NMFS violated the Administrative Procedure Act (APA) by failing to collect or disclose data supporting that the rule would provide economic benefit to Caribbean fishermen and that it did not consider potential negative impact on the financial health of tourist industries. NMFS also failed to properly consider ecological factors in the AM Timing Amendment.

Response: NMFS disagrees. The Council and NMFS analyzed impacts to both the economic and ecological environments in the AM Timing Amendment Environmental Assessment (EA). The EA analyzed the effects of implementing the AM Timing Amendment on the human environment, including the impacts of the proposed action on the socio-economic, administrative, physical, biological, and ecological environments (including impacts to species listed under the Marine Mammal Protection Act and the Endangered Species Act (ESA)). The data used in the AM Timing Amendment to analyze alternatives modifying the timing of AM-based closures in the AM Timing Amendment are described in the EA and have been determined by the NMFS Southeast Fisheries Science Center to be the best scientific information available. The Council and NMFS used these data to consider and analyze the expected direct and indirect socio-economic effects of the proposed action on the fishing industries in the U.S. Caribbean, and considered the tourism industries that would be reasonably expected to be affected by the proposed actions in the AM Timing Amendment. For example, the Council and NMFS considered whether each alternative would be likely to lead to a closure during periods of peak tourism. The economic analysis in the EA determined that no significant impact on the socio-economic environment will result from the the AM Timing Amendment.

The EA also evaluated the impacts of the AM Timing Amendment on the biological and ecological environment and protected species. As discussed in

the EA, the implementation of the AM Timing Amendment will minimally affect current fishing operations or activities; therefore, the Council and NMFS concluded that additional impacts on the ecological environment are not expected. The modification of the date of implementation of AM-based closures is not expected to adversely affect ESA-listed species or critical habitat beyond those effects previously considered in the subject FMPs and ESA Section 7 consultations.

The public has had multiple opportunities to participate in the development of the AM Timing Amendment and to provide comments. The public had the opportunity to comment on the AM Timing Amendment and draft EA at public hearings in November 2015 and August 2016, and during public testimony at the June 2016 and August 2016 Council meetings, in advance of final approval by the Council. Following the Council's approval of the AM Timing Amendment, NMFS provided the opportunity for public comment on the amendment through a 60-day public comment period on the notice of availability (82 FR 1308, January 5, 2017), and through a 30-day comment period on the proposed rule (82 FR 10326, February 10, 2017), consistent with the Magnuson-Stevens Act and APA public notice and comment requirements.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the AM Timing Amendment, the FMPs, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. A public comment relating to socio-economic implications and potential impacts on small businesses is addressed in the Comments and Responses section of this final rule. No changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Accountability measures, Annual catch limits, Caribbean, Fisheries, Fishing.

Dated: May 4, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.12, revise paragraph (a) introductory text to read as follows:

§ 622.12 Annual catch limits (ACLs) and accountability measures (AMs) for Caribbean island management areas/ Caribbean EEZ.

(a) If landings from a Caribbean island management area, as specified in Appendix E to this part, except for landings of queen conch (see § 622.491(b)), or landings from the Caribbean EEZ for tilefish and aquarium trade species, are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (a)(1) of this section for Puerto Rico management area species or species groups, paragraph (a)(2) of this section for St. Croix management area species or species groups, paragraph (a)(3) of this section for St. Thomas/St. John management area species or species groups, or paragraph (a)(4) of this section for the Caribbean EEZ, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. As described in the respective FMPs, for each species or species group in this paragraph, any required fishing season reduction will be applied from September 30 backward, toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied from October 1 forward, toward the end of the fishing year. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMPs. With the exceptions of Caribbean queen conch in the Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section are given in round weight.

* * * * *

[FR Doc. 2017–09360 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170126124–7124–01]

RIN 0648–BG63

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northern Red Hake Accountability Measure

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

ACTION: Final rule.

SUMMARY: This action reduces the in-season possession limit adjustment trigger for northern red hake due to an annual catch limit overage in fishing year 2015. Reduction of the trigger is a non-discretionary action intended to minimize the potential for catch overages in the future. This action reinstates regulatory text that we inadvertently removed during a previous rule making action. The intent of this action is to inform the public of this reduction in the possession limit trigger. The regulatory correction is

intended to clarify the original purpose of the regulation.

DATES: The rule is effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Policy Analyst, phone (978) 281–9144, or *peter.burns@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

This action reduces the in-season possession limit adjustment trigger for northern red hake, effective May 9, 2017, as described in the Northeast Multispecies Fishery Management Plan (FMP). The accountability measures for the small-mesh multispecies fishery require the reduction of the possession limit adjustment trigger when the fishery exceeds a stock's annual catch limit (ACL), as occurred with northern red hake in 2015. Additionally, this action reinstates the regulatory text that details the raised-footrope trawl gear specifications. Use of the raised-footrope trawl is mandatory in certain small-mesh exemption areas. This action reinstates the regulatory text that we inadvertently removed from the regulations when we published the final rule to implement the measures in Amendment 19 to the Northeast Multispecies FMP in 2013 (78 FR 20260; April 4, 2013).

The small-mesh multispecies fishery is managed as a component of the Northeast Multispecies FMP, using a series of exemptions from the minimum mesh size requirements of the groundfish fishery. There are three species managed as five stocks under these regulations (northern and southern silver hake, northern and southern red hake, and offshore hake). The northern stock areas are generally the Gulf of Maine and Georges Bank, and the southern stock areas are in Southern New England and the Mid-Atlantic regions. Silver hake, also known as ''whiting,'' is generally the primary target species of the fishery. Red hake is caught concurrently with whiting and is typically sold as bait.

Under the current regulations, if catch of a small-mesh multispecies stock exceeds its ACL in a given fishing year, we are required to reduce the in-season possession limit adjustment trigger (currently 62.5 percent for northern red hake) in a subsequent fishing year by 1 percent for each 1 percent by which the ACL was exceeded. During the fishing year, when we project that the landings have reached the trigger percentage of the total allowable landings (TAL), we will reduce the possession limit for that stock to an incidental level for the remainder of the fishing year.

This is not the first time that we have reduced the northern red hake in-season possession limit adjustment trigger. In fishing year 2012, the trigger for the incidental catch limit was 90 percent for all small-mesh multispecies stocks. We initially determined that the northern red hake ACL was exceeded by 45 percent in 2012 and 2013, so the incidental possession limit trigger was reduced from 90 percent to 45 percent, beginning in fishing year 2014. During development of the whiting specifications for fishing years 2015–2017, the New England Fishery Management Council's Small-Mesh Multispecies Plan Development Team determined that the 2012 ACL had been underestimated, meaning that the catch had exceeded the ACL less than previously thought. Accordingly, we adjusted the possession limit trigger for northern red hake from 45 percent to 62.5 percent of the TAL, beginning in fishing year 2015.

We included the adjusted possession limit trigger in the final specifications packages for the 2015–2017 fishing years. That action also reduced the northern red hake possession limit from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg) per trip to delay the in-season accountability measure until later in the season and minimize the chance of a subsequent ACL overage, as occurred in fishing years 2012 and 2013. As an additional means of extending the season and reducing red hake discards, it established a new in-season possession limit trigger that reduced the possession limit for northern red hake to 1,500 lb (680 kg) per trip when estimated landings reach 45 percent of the TAL.

In fishing year 2015, the northern red hake ACL was 273 mt, with a TAL of 104 mt. Northern red hake commercial catch, including landings and discards, was 340 mt, exceeding the ACL by 67 mt, or 24.6 percent. Accordingly, this action reduces the possession limit trigger by 24.6 percent, from 62.5 percent of the TAL to 37.9 percent of the TAL, effective May 9, 2017. This measure reduces the possession limit for northern red hake from 3,000 lb (1,361 kg) per trip to the incidental possession limit of 400 lb (181 kg) once the fleet is projected to land 45.5 mt in fishing year 2017. This action also necessitates the removal of the 1,500-lb (680-kg) possession limit at 45 percent of the TAL. The reduced trigger will remain in effect until the Council changes it through specifications or a framework action. This action will not alter the possession limit triggers for any of the other small-mesh multispecies stocks because catch of those stocks did not exceed the respective ACLs in 2015.

In addition to adjusting the possession limit trigger percentage, this action re-instates important regulatory text that we inadvertently deleted from the regulations during a previous rulemaking action. Specifically, text for paragraphs (a)(9)(ii)(A) through (D) of § 648.80 were mistakenly removed from the regulations when an amendment in a final rule implementing measures for Amendment 19 was incorporated into the Code of Federal Regulations. Those longstanding paragraphs provide the detailed gear specifications for the raised-footrope trawl, a gear type that fishermen must use when fishing in certain small-mesh exemption areas. In that rule, we had intended only to amend the introductory text to § 648.80(a)(9)(ii), but the subsequent paragraphs were ultimately removed when the amendment was incorporated into the Code of Federal Regulations.

For reasons described below, there is good cause to waive the 30-day delay of the effective date for the actions in this final rule. Accordingly, the adjusted possession limit adjustment trigger and the reinstatement of the regulatory text take effect immediately upon publication in the **Federal Register** (see Classification).

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for the modifications to the northern red hake possession limit trigger because it would be impracticable and contrary to the public interest. The final rule for Amendment 19 to the Northeast Multispecies FMP, which set the specifications and accountability measures for the small-mesh multispecies fishery, already considered comment on these measures with the understanding that the possession limit trigger could be adjusted when the ACL is exceeded. This action modifies the regulations regarding the accountability measures as intended by the Council and as required in the regulations. Adjustment of the possession limit trigger is a non-discretionary action required by the provisions of Amendment 19. Currently, these regulations specify the northern red hake trigger at 62.5 percent of the TAL. Because the ACL was exceeded, the 62.5-percent trigger for northern red hake will be reduced to 37.9 percent. If the new trigger is not published near the start of the 2017 fishing year on May 1, 2017, the fishery could once again exceed the catch limits because

fishermen would not be aware of the new reduced trigger level, which could result in adverse impacts to fishery resources and curtailed fishing opportunities leading to unnecessary adverse economic impacts for fishery participants. The Council and industry were informed of this necessary action at recent meetings of the Council (September 20, 2016), the Council's Small-Mesh Multispecies Committee (October 13, 2016), and at a joint meeting of the Council's Small-Mesh Multispecies Plan Development Team and Advisory Panel (October 6, 2016). During those meetings, there was no indication that the Council intended to reconsider the need for this non-discretionary adjustment to the possession limit trigger. For the reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in effectiveness of these accountability measures.

As to the reinstatement of the regulatory text in paragraphs (a)(9)(ii)(A)–(D) in § 648.80, pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, also finds there is good cause to waive prior notice and comment as it would be impracticable and contrary to the public interest. The reinstatement of the regulatory text in paragraphs (a)(9)(ii)(A)–(D) in § 648.80 is necessary to ensure the proper specifications for the raised footrope trawl in the small-mesh fishery. The extraction of the relevant text was a drafting error and was not intended under Amendment 19, which was the basis for the rulemaking by which the text was inadvertently deleted. The industry has continued to comply with these specifications, which constitute standard industry practice, but the text setting forth these requirements is missing from the regulations. The specifications ensure that the trawl net is rigged to avoid contact with the ocean bottom to reduce the bycatch of non-targeted regulated species. The absence of these regulations may cause harm to fishery resources and benthic habitat and, therefore, should be reinstated as soon as practicable before the start of the 2017 fishing year to maintain the regulations as intended in the FMP. These gear requirements have undergone the appropriate level of notice and comment prior to their initial publication in the regulations. Delaying the re-instatement of this component of the fishery specifications to allow for notice and comment would be contrary to the public interest because it could have negative implications on the resource and create confusion for the industry. In addition, a delay for additional comment would be counter to the intent of the Council, which has not requested a reconsideration of the need for these important specifications. For the reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in effectiveness of the raised footrope trawl regulations.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

This rule is not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 4, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.80, paragraphs (a)(9)(ii)(A) through (D) are added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(9) * * *

(ii) * * *

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½ inch (1.2 cm) for the top leg, not larger than ⅝ inch (1.6 cm) for the bottom leg, and not larger than ¾ inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wing ends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5⁄16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

* * * * *

§ 648.86 [Amended]

■ 3. In § 648.86, paragraph (d)(5) is removed.

■ 4. In § 648.90, paragraph (b)(5)(iii) is amended to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(b) * * *

(5) * * *

(iii) *Small-mesh multispecies in-season adjustment triggers.* The small-mesh multispecies in-season accountability measure adjustment triggers are as follows:

Species	In-season adjustment trigger (percent)
Northern Red Hake	37.9
Northern Silver Hake	90
Southern Red Hake	90
Southern Silver Hake	90

* * * * *

[FR Doc. 2017–09393 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 88
Tuesday, May 9, 2017

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 26, 50, 52, 73, and 140

[NRC–2015–0070]

RIN 3150–AJ59

Regulatory Improvements for Power Reactors Transitioning to Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Preliminary draft regulatory analysis; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on the preliminary draft regulatory analysis to support a rulemaking that would amend the NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending the regulations would be to provide for an efficient decommissioning process; reduce the need for exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC; and support the principles of good regulation, including openness, clarity, and reliability. The NRC plans to hold a public meeting in spring 2017 to discuss the draft regulatory basis that was previously published in the **Federal Register** and the preliminary draft regulatory analysis to facilitate the development of public comments on those documents.

DATES: Submit comments by June 13, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may submit comments by the following method:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0070. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christopher Howells, telephone: 301–415–1381, email: *Christopher.Howells@nrc.gov;* or Fred Schofer, telephone: 301–415–5682, email: *Fred.Schofer@nrc.gov.* Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments
II. Discussion
III. Request for Comment
IV. Cumulative Effects of Regulation
V. Plain Writing

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0070 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0070.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The preliminary draft regulatory analysis document is available in ADAMS under Accession No. ML16271A511.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0070 in your comment submission. If you cannot submit your comments on the Federal rulemaking Web site, *www.regulations.gov,* then contact one of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons to not include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS. Please note that the NRC will not provide formal written responses to each of the comments received on the preliminary draft regulatory analysis. However, the NRC staff will consider all comments received in the development of the final regulatory analysis.

II. Discussion

On March 15, 2017, the NRC published a document in the **Federal Register** issuing a draft regulatory basis to support the ''Regulatory Improvements for Reactors Transitioning to Decommissioning'' rulemaking to amend the NRC's power reactor decommissioning regulations (82 FR 13778). The draft regulatory basis was made available for a 90-day public comment period (ending on June 13, 2017). In the draft regulatory basis, the NRC concludes that it has sufficient justification to proceed with rulemaking in the areas of emergency preparedness, physical security, decommission trust fund, offsite and onsite financial protection requirements and indemnity agreements, and application of the backfit rule. Further, the NRC is

recommending rulemaking to: (1) Require that the post-shutdown decommissioning activities report (PSDAR) contain a description of how the spent fuel stored under a general independent spent fuel storage installation license will be removed from the reactor site in accordance with the regulatory requirements in § 50.82, ''Termination of License,'' of title 10 of the *Code of Federal Regulations* (10 CFR), 10 CFR 50.54(bb), 10 CFR 52.110, ''Termination of License,'' and 10 CFR 72.218, ''Termination of Licenses;'' and (2) amend 10 CFR 51.53, ''Postconstruction Environmental Reports,'' and 10 CFR 51.95, ''Postconstruction Environmental Impact Statements,'' to clarify that the requirements for a license amendment before decommissioning activities may commence applies only to non-power reactors, as specified in 10 CFR 50.82(b).

In the draft regulatory basis, the NRC concludes that regulatory activities other than rulemaking—such as guidance development—should be used to address stakeholder concerns regarding the appropriate role of State and local governments in the decommissioning process, the level of NRC review and approval of the PSDAR, and the 60 year limit for power reactor decommissioning. The NRC also determined that additional stakeholder input is needed prior to finalizing recommendations related to cyber security, drug and alcohol testing, certified fuel handler training and minimum staffing, aging management, and fatigue management. The NRC is seeking specific public input on these topics as part of the public comment request on the entire draft regulatory basis.

To supplement the draft regulatory basis, the NRC has prepared a preliminary draft regulatory analysis, in which the costs, benefits, and other impacts of each rulemaking alternative are presented in order to determine the economic impact to industry and to government from the proposed rulemaking. The NRC prepared the preliminary draft regulatory analysis to support decision making during the preparation of the draft regulatory basis document, which includes an evaluation of possible regulatory improvements for reactors transitioning to decommissioning.

III. Request for Comment

The NRC is requesting comment on the preliminary draft regulatory analysis that was prepared to support the draft regulatory basis for the ''Regulatory Improvements for Reactors Transitioning to Decommissioning'' rulemaking. As you prepare your comments, consider the following general questions:

1. Is the NRC considering appropriate alternatives for each regulatory area described in the preliminary draft regulatory analysis?

2. Are there additional factors that the NRC should consider in each regulatory area? What are these factors?

3. Is there additional information concerning regulatory impacts that the NRC should include in its regulatory analysis for this rulemaking?

4. Are all costs and benefits properly addressed to determine the economic impact of the rulemaking alternatives?

5. What additional costs or cost savings will the rulemaking alternatives cause to society, industry, and government?

IV. Cumulative Effects of Regulation

The cumulative effects of regulation (CER) describe the challenges that licensees or other impacted entities (such as State agency partners) may face while implementing new regulatory positions, programs, and requirements (*e.g.,* rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC has implemented CER enhancements to the rulemaking process to facilitate public involvement throughout the rulemaking process. In developing comments on the preliminary draft regulatory analysis, consider the following questions:

(1) In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements, including changes to programs, procedures, or the facility?

(2) If current or projected CER challenges exist, what should be done to address this situation (*e.g.,* if more time is required to implement the new requirements, what period of time would be sufficient, and why such a time frame is necessary)?

(3) Do other regulatory actions (*e.g.,* orders, generic communications, license amendment requests, and inspection findings of a generic nature) by the NRC or other agencies influence the implementation of the potential proposed requirements?

(4) Are there unintended consequences? Does the potential proposed action create conditions that would be contrary to the potential proposed action's purpose and objectives? If so, what are the consequences and how should they be addressed?

(5) Please provide information on the costs and benefits of the potential proposed action. This information will be used to support additional regulatory analysis by the NRC.

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published in the **Federal Register** on June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated at Rockville, Maryland, this 3rd day of May 2017.

For the Nuclear Regulatory Commission.

Gregory T. Bowman,

Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–09332 Filed 5–4–17; 11:15 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0333; Directorate Identifier 2017–NM–005–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. (Type Certificate Previously Held by Canadair Limited) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–215–6B11 (CL–415 Variant) airplanes. This proposed AD was prompted by a report indicating that an oxygen bottle was found loose while the clamp strap was in the locked position. This proposed AD would require modification of the clamp strap and installation of additional shims, as applicable, to the

flight crew's oxygen bottle retaining structures. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 23, 2017.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0333; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0333; Directorate Identifier 2017–NM–005–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2016–33, dated October 12, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–215–6B11 (CL–415 Variant) airplanes. The MCAI states:

> During the implementation of Service Bulletin (SB) 215–4051, the oxygen bottle was found loose while the clamp strap was in the locked position. This was determined to be caused by the quick release latch assembly not achieving the proper clamping pressure.
>
> The release of the oxygen bottle due to improper clamping pressure may result in a loose mass cockpit hazard or an oxygen rich environment leading to a possible fire hazard.
>
> In order to mitigate the unsafe condition, SB 215–4457 was issued to modify the clamp strap and install additional shims to add strength to the attaching structure for all affected aeroplanes.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0333.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 215–4457, Revision 3, dated May 8, 2013. The service information describes procedures for installing shims, and, for certain airplanes, modifying the straps of the latch assembly, on the flight crew's oxygen bottles' retaining structure. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 26 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification and installation	16 work-hours × $85 per hour = $1,360	$2,250	$3,610	$93,860

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Type Certificate Previously Held by Canadair Limited): Docket No. FAA–2017–0333; Directorate Identifier 2017–NM–005–AD.

(a) Comments Due Date

We must receive comments by June 23, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. (Type Certificate previously held by Canadair Limited) Model CL–215–6B11 (CL–415 Variant) airplanes, certificated in any category, having serial numbers 2001, 2002, 2005 through 2007 inclusive, 2010, 2012 through 2017 inclusive, 2019, 2022 through 2024 inclusive, 2026, 2057, 2063, 2065, 2076, 2077, and 2081.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by a report indicating that an oxygen bottle was found loose while the clamp strap was in the locked position. We are issuing this AD to prevent an oxygen bottle from being released, which would result in a loose mass object in the cockpit and could also result in an oxygen-rich environment that could lead to a possible fire hazard.

(f) Compliance

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

(g) Installation and Modification

Within 12 months after the effective date of this AD, install additional shims and modify the clamp strap, as applicable, to the flight crew's oxygen bottle retaining structures, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 215–4457, Revision 3, dated May 8, 2013.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using any of the service information identified in paragraphs (h)(1), (h)(2), or (h)(3) of this AD.

(1) Bombardier Service Bulletin 215–4457, Revision 2, dated October 24, 2012.

(2) Bombardier Service Bulletin 215–4457, Revision 1, dated June 12, 2012.

(3) Bombardier Service Bulletin 215–4457, dated April 4, 2012.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Viking Air Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2016–33, dated October 12, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0333.

(2) For more information about this AD, contact Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 2, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09324 Filed 5–8–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0334; Directorate Identifier 2017–NM–008–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2014–25–01, for certain Bombardier, Inc., Model DHC–8–400 series airplanes. AD 2014–25–01 currently requires modifying the nose landing gear (NLG) trailing arm and installing a new pivot pin retention mechanism. Since we issued AD 2014–25–01, we have received reports of discrepancies of a certain bolt at the

pivot pin link, resulting in corrosion of the bolt. This proposed AD would instead require modifying the NLG shock strut assembly. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 23, 2017.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0334; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7303; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0334; Directorate Identifier 2017–NM–008–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On November 28, 2014, we issued AD 2014–25–01, Amendment 39–18042 (79 FR 73808, December 12, 2014) (''AD 2014–25–01''), for certain Bombardier, Inc., Model DHC–8–400 series airplanes. AD 2014–25–01 was prompted by a report of several missing or damaged pivot pin retention bolts. AD 2014–25–01 requires modifying the NLG trailing arm and installing a new pivot pin retention mechanism. We issued AD 2014–25–01 to prevent failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of an NLG tire during take-off or landing.

Since we issued AD 2014–25–01, we have received reports of missing or damaged pivot pin retention bolts and chrome peeling on special bolt part number 47205–1 at the pivot pin link, resulting in corrosion of the bolt substrate layer. Therefore, we have determined that the actions required by AD 2014–25–01 do not address the identified unsafe condition.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–29R2, dated December 21, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–400 series airplanes. The MCAI states:

> Two in-service incidents have been reported on DHC–8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204–13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take-off or landing.
>
> To prevent the potential failure of the pivot pin retention bolt, Bombardier Aerospace has developed a modification which includes a new retention bolt, a reverse orientation of the retention bolt and a rework of the weight on wheel (WOW) proximity sensor cover to provide clearance for the re-oriented retention bolt.
>
> Since the original issue of this [Canadian] AD [which corresponds to AD 2010–13–04, Amendment 39–16335 (75 FR 35622, June 23, 2010)], there have been several reports of pivot pin retention bolts found missing or damaged. Additional investigation determined that the failures were caused by high contact stresses on the retention bolt due to excessive frictional torque on the pivot pin and an adverse tolerance condition at the retention bolt.
>
> Revision 1 of this [Canadian] AD mandated the installation of a new pivot pin retention mechanism.
>
> Since the issuance of Revision 1 of this [Canadian] AD, there have been reports of chrome peeling on special bolt part number 47205–1 at the pivot pin link resulting in corrosion of the bolt substrate layer.
>
> Revision 2 of this [Canadian] AD mandates the installation of new special bolt part number 47205–3 with additional processing for increased chrome plating adhesion on aeroplanes equipped with nose landing gear shock strut assembly part number 47100–19 or any assembly with Bombardier (BA) Service Bulletin (SB) 84–32–110 incorporated. In addition, Revision 2 of this [Canadian] AD mandates the installation of a new pivot pin retention mechanism that includes new special bolt part number 47205–3 on aeroplanes equipped with nose landing gear shock strut assembly part number 47100–9, 47100–11, 47100–13, 47100–15, or 47100–17 without BA SB 84–32–110 incorporated. The corrective actions of Revision 2 of this [Canadian] AD cancel and replace the corrective actions of Revision 1 of this [Canadian] AD.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0334.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued Bombardier Service Bulletin 84–32–145, Revision A, dated October 18, 2016. The service information describes procedures for modifying the NLG shock strut assembly by installing a

new, improved pivot pin retention mechanism and a new retention bolt. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 52 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $8,840, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–25–01, Amendment 39–18042 (79 FR 73808, December 12, 2014), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2017–0334; Directorate Identifier 2017–NM–008–AD.

(a) Comments Due Date

We must receive comments by June 23, 2017.

(b) Affected ADs

This AD replaces AD 2014–25–01, Amendment 39–18042 (79 FR 73808, December 12, 2014).

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, 4003 through 4533 inclusive, and 4535, equipped with any nose landing gear (NLG) shock strut assembly having part number 47100–9, 47100–11, 47100–13, 47100–15, 47100–17, or 47100–19.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of missing or damaged pivot pin retention bolts and chrome peeling on a certain bolt at the pivot pin link, resulting in corrosion of the bolt. We are issuing this AD to prevent failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of an NLG tire during takeoff or landing.

(f) Compliance

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

(g) Installation of Improved Pivot Pin Retention Mechanism and Bolt

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Install a new pivot pin retention mechanism to the NLG shock strut assembly, and replace the existing pivot pin retention bolt with a new bolt, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–145, Revision A, dated October 18, 2016.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–32–145, dated July 26, 2016.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 manager of the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2009–29R2, dated December 21, 2016, for related information. This MCAI may be found in the

AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0334.

(2) For more information about this AD, contact Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7303; fax 516–794–5531.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 2, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09325 Filed 5–8–17; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–4697; File No. S7–05–17]

RIN 3235–AM02

Amendments to Investment Advisers Act Rules To Reflect Changes Made by the FAST Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the definition of a venture capital fund (rule 203(*l*)–1) and the private fund adviser exemption (rule 203(m)–1) under the Investment Advisers Act of 1940 (the ''Advisers Act'') in order to reflect changes made by title LXXIV, sections 74001 and 74002 of the Fixing America's Surface Transportation Act of 2015 (the ''FAST Act''), which amended sections 203(*l*) and 203(m) of the Advisers Act. Title LXXIV, section 74001 of the FAST Act amended the exemption from investment adviser registration for any adviser solely to one or more ''venture capital funds'' in Advisers Act section 203(*l*) by deeming ''small business investment companies'' to be ''venture capital funds'' for purposes of the exemption. Accordingly, we are proposing to amend the definition of a venture capital fund to include ''small business investment companies.'' Title LXXIV, section 74002 of the FAST Act amended the exemption from investment adviser registration for any adviser solely to ''private funds'' with less than $150 million in assets under management in Advisers Act section 203(m) by excluding the assets of ''small business investment companies'' when calculating ''private fund assets'' towards the registration threshold of $150 million. Accordingly, we are proposing to amend the definition of ''assets under management'' in the private fund adviser exemption to exclude the assets of ''small business investment companies.''

DATES: Comments on the proposed rule amendments should be received on or before June 8, 2017.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–05–17 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–05–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Jennifer Songer, Senior Counsel or Alpa Patel, Branch Chief at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to rules 203(*l*)–1 [17 CFR 275.203(*l*)–1] and 203(m)–1 [17 CFR 275.203(m)–1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b].[1]

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I. Background

The Fixing America's Surface Transportation Act of 2015 (the ''FAST Act'')[2] amended sections 203(*l*) and 203(m) of the Investment Advisers Act of 1940 (the ''Advisers Act'')[3] regarding the registration of investment advisers to small business investment companies (''SBICs'').[4] Title LXXIV, section 74001

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[1] Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code [15 U.S.C. 80b], at which the Advisers Act is codified, and when we refer to Advisers Act rules, or any paragraph of these rules, we are referring to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275], in which these rules are published.

[2] Public Law 114–94, 129 Stat. 1312 (Dec. 4, 2015).

[3] 15 U.S.C. 80b.

[4] An SBIC is (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940): (A) A small business investment company that is licensed under the Small Business Investment Act of 1958 (''SBIA''), (B) an entity that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the SBIA, which notice or license has not been revoked, or (C) an applicant that is affiliated with 1 or more licensed small business investment companies described in subparagraph

Continued

of the FAST Act amended the exemption from investment adviser registration for any adviser solely to one or more ''venture capital funds'' in Advisers Act section 203(*l*) (''venture capital fund adviser exemption'') by deeming SBICs to be ''venture capital funds'' for purposes of the exemption. Accordingly, we are proposing to amend the definition of ''venture capital funds'' in Advisers Act rule 203(*l*)–1 to include SBICs. Title LXXIV, section 74002 of the FAST Act amended the exemption from investment adviser registration for any adviser solely to ''private funds'' with less than $150 million in assets under management in Advisers Act section 203(m) (''private fund adviser exemption'') by excluding the assets of SBICs for purposes of calculating private fund assets towards the registration threshold of $150 million.[5] Accordingly, we are also proposing to amend the definition of ''assets under management'' in Advisers Act rule 203(m)–1 to exclude the assets of SBICs.

Advisers Act section 203(b)(7) provides an exemption from investment adviser registration for advisers solely to SBICs (the ''SBIC adviser exemption''). We believe that, prior to the enactment of the FAST Act, the SBIC adviser exemption was the primary exemption from investment adviser registration available to advisers to SBICs.[6] The FAST Act expanded the applicability of the venture capital fund adviser exemption and the private fund adviser exemption to specifically include advisers to SBICs. Advisers relying on the SBIC adviser exemption are not subject to reporting or recordkeeping provisions under the Advisers Act or examination by our staff.[7] Advisers who rely on the venture capital fund adviser exemption and the private fund adviser exemption are exempt from registration under the Advisers Act; however, they are considered ''exempt reporting advisers'' and must maintain such records and submit such reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.[8] Exempt reporting advisers are required to file a subset of the information requested by Form ADV with the Commission but are not subject to many of the other substantive requirements to which registered investment advisers are subject.

Advisers to SBICs can now rely on the following exemptions from investment adviser registration with the Commission: (1) The SBIC adviser exemption and advise only SBICs; (2) the venture capital fund adviser exemption and advise both SBICs and venture capital funds (as defined in rule 203(*l*)–1); or (3) the private fund adviser exemption and advise both SBICs and non-SBIC private funds, provided those non-SBIC private funds account for less than $150 million in assets under management in the United States.[9]

As discussed above, we are proposing to amend our rules regarding the definition of ''venture capital fund'' in Advisers Act rule 203(*l*)–1 and the definition of ''assets under management'' in Advisers Act rule 203(m)–1 for private funds to reflect in our rules the changes made by the FAST Act's amendments to the Advisers Act.

II. Discussion

A. Proposed Amendments to Rule 203(l)–1

The venture capital fund adviser exemption in section 203(*l*) of the Advisers Act provides that an investment adviser that *solely* advises venture capital funds is exempt from registration under the Advisers Act.[10] Advisers who qualify for the venture capital fund adviser exemption are exempt from registration under the Advisers Act; however, they are considered ''exempt reporting advisers'' and must maintain such records and submit such reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.[11] The FAST Act amended the venture capital fund adviser exemption by deeming SBICs to be

(A) and that has applied for another license under the SBIA, which application remains pending. Advisers Act section 203(b)(7).

[5] The term ''private fund'' means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act. Advisers Act section 202(a)(29). While we believe most SBICs are private funds, it is possible for an SBIC to be an investment company registered with the Commission. *See* 13 CFR 107.115 (stating that a registered investment company is eligible to apply for an SBIC license).

[6] Although we believe that most, if not all, SBICs are private funds, we believe that very few advisers to SBICs have private fund assets under management in the United States of less than $150 million. Therefore, very few advisers to SBICs are likely to qualify for the private fund adviser exemption. *See SBIC Program Overview,* Small Business Administration, Office of Investment and Innovation, Data Management Branch, September 30, 2016, available at: *https://www.sba.gov/sbic/general-information/program-overview (''SBIC Program Overview'').*

[7] Under section 204(a) of the Advisers Act, the Commission has the authority to require an investment adviser to maintain records and provide reports, as well as the authority to examine such adviser's records, unless the adviser is specifically exempted from the requirement to register pursuant to Advisers Act section 203(b). Advisers Act section 203(b)(7) provides an exemption from registration for advisers solely to SBICs. Advisers Act sections 204(a) and 203(b)(7); *Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers,* Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39646 (July 6, 2011)] (''*Exemptions Release*'') at footnote 5 and accompanying text.

[8] Under Advisers Act section 204(a), the Commission has the authority to require an investment adviser to maintain records and provide reports, as well as the authority to examine such adviser's records, unless the adviser is specifically exempted from the requirement to register pursuant to Advisers Act section 203(b). Investment advisers that are exempt from registration in reliance on other sections of the Advisers Act, such as sections 203(*l*) or 203(m), are not specifically exempted from the requirement to register pursuant to section 203(b), and thus the Commission has authority under Advisers Act section 204(a) to require those advisers to maintain records and provide reports and has authority to examine such advisers' records. Advisers Act sections 203(*l*)(1) and 203(m)(2). *See also Exemptions Release supra* footnote 7 at footnote 5 and accompanying text. Advisers Act rule 204–4 requires an exempt reporting adviser to complete and file reports on Form ADV by following the instructions in the Form, which specify the information that an exempt reporting adviser must provide. *See ''Frequently Asked Questions on Form ADV and IARD''* available at: *https://www.sec.gov/divisions/investment/iard/iardfaq.shtml (''Form ADV FAQs'')* at section entitled: ''*Reporting to the SEC as an Exempt Reporting Adviser*''*; Form ADV: General Instructions* available at: *https://www.sec.gov/about/forms/formadv-instructions.pdf* (''*General Instructions to Form ADV*'') at Instruction 3. Further, an adviser electing to be an exempt reporting adviser with the Commission must separately evaluate the need to register in any state in which it operates. *General Instructions to Form ADV* at Instruction 14.

[9] *See FAST Act supra* footnote 2. *See generally, FAST Act Changes Affecting Investment Advisers to Small Business Investment Companies* (March 2016), available at: *https://www.sec.gov/investment/im-guidance-2016-03.pdf* (''*Staff Guidance*'').

[10] We note, however, that depending on the facts and circumstances, we may view two or more separately formed advisory entities, each of which purports to rely on a separate exemption from registration, as a single adviser for purposes of assessing the availability of exemptions from registration. For example, an adviser may not advise venture capital funds with more than $150 million in assets under management in reliance on the venture capital fund adviser exemption and also advise other types of private funds with less than $150 million in assets under management in reliance on the private fund adviser exemption. *See Exemptions Release supra* footnote 7 at footnote 314, footnote 506 and accompanying text. *See also In the Matter of TL Ventures Inc.,* Investment Advisers Act Release No. 3859 (June 20, 2014) (settled action); Advisers Act section 208(d), which prohibits a person from doing indirectly or through or by another person, any act or thing which it would be unlawful for such person to do directly.

[11] Advisers Act section 203(*l*)(1). *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950 (July 11, 2011)] (''*Implementing Release*'') at section II.B. Advisers Act rule 204–4 requires an exempt reporting adviser to complete and file reports on Form ADV by following the instructions in the Form, which specify the information that an exempt reporting adviser must provide. *See Form ADV FAQs supra* footnote 8 at section entitled: ''*Reporting to the SEC as an Exempt Reporting Adviser*''*; General Instructions to Form ADV supra* footnote 8 at Instruction 4.

venture capital funds for purposes of the exemption.[12]

Advisers Act rule 203(*l*)–1 defines a ''venture capital fund'' for purposes of the venture capital fund adviser exemption.[13] While most, if not all, SBICs meet the definition of a ''private fund'' under the Advisers Act,[14] they may not meet the rule 203(*l*)–1 definition of a ''venture capital fund.'' We are proposing to amend Advisers Act rule 203(*l*)–1 to include SBICs in the definition of venture capital funds for purposes of the venture capital fund adviser exemption.[15] Amending the definition of venture capital fund in Advisers Act rule 203(*l*)–1 will make it consistent with Advisers Act section 203(*l*)(2), thereby reflecting in the rule the application of the venture capital fund adviser exemption to advisers to SBICs. Under this proposal, an adviser to SBICs who relies on the venture capital fund adviser exemption would be required to submit Form ADV reports to the Commission as an exempt reporting adviser, consistent with the current requirement for advisers relying on the venture capital fund adviser exemption.[16]

We are requesting comment on the proposed amendment to rule 203(*l*)–1.

- Prior to the enactment of the FAST Act, was the SBIC adviser exemption the primary exemption from investment adviser registration available to advisers to SBICs or did advisers to SBIC rely on other exemptions from registration? If so, which ones?
- Should we make any changes to the proposed amendment in order to better reflect the FAST Act's amendment to section 203(*l*) of the Advisers Act?
- Are there alternative methods for reflecting the FAST Act's amendment to section 203(*l*) of the Advisers Act that would be clearer?
- Like all exempt reporting advisers, advisers to SBICs relying on the proposed amendments would be required to report on Form ADV certain information about the private funds that they advise, including any SBIC that they advise that is a private fund.
  - Should we revise Form ADV to require advisers to SBICs to report more information for SBICs than is currently required to be reported for private funds? For example, should we require advisers to provide an identifier, such as the U.S. Small Business Administration (''SBA'') license number for their SBICs? Would investors or other users benefit from such information? Why or why not?
  - Should we revise Form ADV to require advisers to SBICs to report less information for SBICs than is currently required to be reported for private funds? Why or why not?

B. Proposed Amendments to Rule 203(m)–1

The private fund adviser exemption in Advisers Act section 203(m) directs the Commission to provide an exemption from registration to any investment adviser that *solely* advises private funds if the adviser has assets under management in the United States of less than $150 million.[17] Advisers Act rule 203(m)–1 implements the private fund adviser exemption. Advisers who qualify for the private fund adviser exemption are exempt from registration under the Advisers Act; however, they are considered ''exempt reporting advisers'' and must maintain such records and submit such reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.[18] The FAST Act amended the private fund adviser exemption to require that private fund advisers exclude the assets of their SBICs for purposes of calculating private fund assets towards the registration threshold of $150 million.

Advisers Act rule 203(m)–1(d)(1) defines ''assets under management'' for purposes of the private fund adviser exemption.[19] We are proposing to amend Advisers Act rule 203(m)–1(d)(1) to exclude an adviser's regulatory assets under management attributable to SBICs from the definition of assets under management for purposes of the private fund adviser exemption.[20] We believe that amending the definition of assets under management in Advisers Act rule 203(m)–1 to make it consistent with Advisers Act section 203(m)(3) would reflect that advisers to both private funds and SBICs can rely on the private fund adviser exemption without regard to the SBIC assets that they advise. Under this proposal, an adviser to SBICs who relies on the private fund adviser exemption would still be required to submit reports to the Commission as an exempt reporting adviser and to include the SBICs that it advises on its Form ADV, consistent with the current requirement for advisers relying on the private fund adviser exemption.[21]

We are requesting comment on the proposed amendment to rule 203(m)–1.

- Should we make any changes to the proposed amendment in order to better reflect the FAST Act's amendment to section 203(m) of the Advisers Act?
- Are there alternative methods for reflecting the FAST Act's amendment to section 203(m) of the Advisers Act that would be clearer?

III. Economic Analysis

A. Introduction and Economic Justification

The Commission is sensitive to the potential economic effects of the proposed amendments to Advisers Act rules 203(*l*)–1 and 203(m)–1. These effects include the benefits and costs to investment advisers, their funds, and the investors in their funds as well as the proposed amendments' implications for efficiency, competition, and capital formation. The economic effects of the proposed amendments are discussed below.

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[12] Advisers Act section 203(*l*)(2).

[13] Advisers Act rule 203(*l*)–1(a) generally defines a ''venture capital fund'' as a private fund that: (i) Represents to investors and potential investors that it pursues a venture capital strategy; (ii) holds no more than 20 percent of the fund's capital commitments in assets that are not qualifying investments (other than short-term holdings); (iii) does not borrow or otherwise incur leverage in excess of 15 percent of the fund's capital commitments, and such borrowing is for a non-renewable term of no longer than 120 days (excluding certain guarantees of qualifying portfolio company obligations by the fund from the 120 day limit); (iv) does not offer its investors redemption or certain other liquidity rights except in extraordinary circumstances; and (v) is not registered under the Investment Company Act and has not elected to be treated as a business development company. *See also* Advisers Act rule 203(*l*)–1(b) and (c).

[14] Advisers Act section 202(a)(29).

[15] Proposed Advisers Act rule 203(*l*)–1(a).

[16] Advisers Act section 203(*l*)(1). *See Implementing Release supra* footnote 11 at section II.B.

[17] *Supra* footnote 10.

[18] Advisers Act section 203(m)(2). *See Implementing Release supra* footnote 11 at section II.B. Advisers Act rule 204–4 requires an exempt reporting adviser to complete and file reports on Form ADV by following the instructions in the Form, which specify the information that an exempt reporting adviser must provide. *See Form ADV FAQs supra* footnote 8 at section entitled: ''*Reporting to the SEC as an Exempt Reporting Adviser*''; *General Instructions to Form ADV supra* footnote 8 at Instruction 3.

[19] For purpose of Advisers Act section 203(m), assets under management means the regulatory assets under management as determined under Item 5.F of Form ADV. Advisers Act rule 203(m)–1(d)(1). Instruction 5.b. to Part 1A of Form ADV explains how to calculate regulatory assets under management for purposes of Item 5.F of Part 1A of Form ADV. In general, it states that an adviser should include the securities portfolios for which it provides continuous and regular supervisory or management services. In the case of private funds, advisers are instructed to determine the current market value (or fair value) of the private fund's assets and the contractual amount of any uncalled commitment pursuant to which a person is obligated to acquire an interest in, or make a capital contribution to, the private fund. *See Form ADV: Instructions for Part 1A* available at *https://www.sec.gov/about/forms/formadv-instructions.pdf* at Instruction 5.b.4.

[20] Proposed Advisers Act rule 203(m)–1(d)(1).

[21] Advisers Act section 203(m)(2). *See Implementing Release supra* footnote 11 at section II.B.

The proposed amendments to Advisers Act rules 203(*l*)–1 and 203(m)–1 would reflect changes made by title LXXIV, sections 74001 and 74002 of the FAST Act to the Advisers Act. While the FAST Act does not expressly require the Commission to amend the Advisers Act rules, the proposed amendments eliminate any confusion that might otherwise exist if Advisers Act rules 203(*l*)–1 and 203(m)–1 were not amended. Proposed Advisers Act rule 203(*l*)–1 would reflect that advisers to venture capital funds and SBICs qualify for the venture capital fund adviser exemption from registration. Proposed Advisers Act rule 203(m)–1 would reflect that advisers to SBIC and non-SBIC private funds with less than $150 million in non-SBIC private fund assets under management in the United States qualify for the private fund adviser exemption from registration.

Economic Baseline

To establish a baseline useful for evaluating the economic effects of the proposed amendments, we briefly describe the nature of SBICs and then define the different classes of advisers that could be affected by the proposal.

According to the SBA, SBICs are investment funds that make equity and debt investments in qualifying small businesses and are licensed and regulated by the SBA.[22] SBICs have access to low-cost capital because of a guarantee by the SBA. According to the SBA, this funding subsidy is intended to promote the SBIC program's purpose of bridging the gap between the small business community's need for capital and traditional sources of financing that might otherwise be more expensive.[23]

Advisers to SBICs may also advise non-SBIC private funds, including venture capital funds. Depending on the amount and type of assets they advise, SBIC advisers belong to one of three categories: (1) Registered investment advisers; (2) exempt reporting advisers; or (3) advisers exempt from registration and reporting requirements. Registered investment advisers are required to file Form ADV and are also subject to other substantive requirements including the establishment of a compliance program and a Code of Ethics.[24] Exempt reporting advisers are required to file a subset of the information requested by Form ADV with the Commission but are not subject to many of the other substantive requirements that registered investment advisers are subject to. Finally, any adviser that solely advises SBICs is exempt from registering with the Commission under section 203(b)(7) of the Advisers Act and does not have an obligation to report information to the Commission.[25]

Prior to the enactment of the FAST Act, an adviser to both SBICs and other non-SBIC private funds qualified for the private fund adviser exemption under Advisers Act rule 203(m)–1 if the adviser had assets under management in the United States, including assets of the SBICs it advised, of less than $150 million. Advisers to SBICs and other non-SBIC private funds that did not qualify for the private fund adviser exemption were required to register with the Commission. In addition, advisers to both venture capital funds and SBICs were required to register with the Commission unless they qualified for the private fund adviser exemption.

In establishing a baseline for the proposed amendments, two additional classes of investment advisers that did not advise SBICs prior to the FAST Act are relevant: (1) Advisers solely to venture capital funds that qualify for the venture capital fund adviser exemption from registration and are considered exempt reporting advisers; and (2) advisers solely to private funds with less than $150 million in assets under management in the United States that qualify for the private fund adviser exemption from registration and are considered exempt reporting advisers. Prior to the FAST Act, advisers relying on the venture capital fund adviser exemption were required to register with the Commission if they added SBIC clients unless their total assets under management remained under $150 million, in which case they could instead rely on the private fund adviser exemption. In addition, prior to the FAST Act, advisers relying on the private fund adviser exemption were required to register with the Commission if they added SBIC clients that caused their total assets under management in the United States to equal or exceed $150 million.

The FAST Act provided the classes of advisers discussed above with several options. First, registered investment advisers to SBICs and non-SBIC private funds can withdraw from registration and report to the Commission as exempt reporting advisers if their non-SBIC private fund assets under management in the United States are less than $150 million. Second, registered investment advisers to SBICs and venture capital funds can withdraw from registration and report to the Commission as exempt reporting advisers. Finally, advisers that qualified for either the venture capital fund adviser or private fund adviser exemptions prior to the FAST Act can begin advising SBICs without changing their registration status independent of the amount of assets attributable to SBICs.

For those advisers that benefit from any of the above options, it would have been in their best economic interest to exercise such options following the passage of the FAST Act, particularly after the Commission's Division of Investment Management issued a guidance update regarding the application of the FAST Act.[26] That guidance update indicated that the Commission's Division of Investment Management would not object to advisers who exclude the assets of the SBICs they advise when determining whether they qualify for the private fund adviser exemption or advisers who consider SBICs to be venture capital funds for the purposes of the venture capital fund adviser exemption.[27] We believe, therefore, that it is likely that advisers have already exercised these options if doing so was in their best interest. However, inconsistencies in the definitions of venture capital funds and assets under management that exist between the Advisers Act rules and the FAST Act may have discouraged some advisers from exercising these options. For example, these inconsistencies may result in assets under management being calculated differently by advisers for purposes of the private fund adviser exemption, which could lead to similar advisers determining their reporting statuses differently.

As of December 31, 2016, there were approximately 12,182 registered investment advisers reporting a total of approximately $66.8 trillion in regulatory assets under management.[28] In addition, there were 3,238 exempt reporting advisers, of whom 588 relied on the venture capital fund adviser exemption,[29] 2,348 relied on the private fund adviser exemption,[30] and 302 qualified for both exemptions. For

[22] *SBIC Program Overview supra* footnote 6.

[23] *Id.*

[24] In addition to reporting requirements, registered investment advisers are required to comply with Advisers Act rules 204–2, 204–3, 204(b)–1, 204A–1, 206(4)–1, 206(4)–2, 206(4)–3, 206(4)–6 and 206(4)–7.

[25] *See supra* footnote 7.

[26] *See Staff Guidance supra* footnote 9.

[27] *Id.*

[28] We calculate these estimates using the last Form ADV filing for each adviser in the 15 months prior to January 1, 2016. This allows us to exclude advisers that are technically still registered with the Commission but have not filed a Form ADV for their most recent fiscal year. We use the same approach in calculating statistics for exempt reporting advisers. Our estimate of assets under management excludes filings that did not report this value so it should be considered a lower bound.

[29] Form ADV, Part 1A, Item 2.B.(1).

[30] Form ADV, Part 1A, Item 2.B.(2).

exempt reporting advisers that relied on the private fund adviser exemption, total private fund assets under management were approximately $124 billion.[31] Registered investment advisers advise approximately 33,175 private funds, while exempt reporting advisers advise approximately 11,722 private funds. As of the end of 2016, there were 313 SBICs licensed by the SBA managing approximately $28 billion in assets.[32] We are unable to identify which of those 313 SBICs are managed by advisers solely to SBICs compared to advisers that also advise other funds because section 203(b)(7) of the Advisers Act exempts advisers solely to SBICs from registration and reporting, and filers of Form ADV are not required to explicitly indicate whether they advise SBICs. Because filers of Form ADV are not required to explicitly indicate whether they advise SBICs, we are not able to estimate the number of advisers that have already taken advantage of the exemptions afforded to them by the FAST Act compared to the number of advisers who have not done so due to any inconsistencies between the Advisers Act rules and the FAST Act.

The proposed amendments may affect the classes of investment advisers mentioned above, the funds they advise, and the investors in those funds. We discuss the potential economic effects of the proposed amendments on these parties in the next two sections.

B. Costs and Benefits

In this section, we discuss the costs and benefits that may result from the proposed amendments for each affected party. The economic effects discussed in this section only apply to the extent that advisers have not already exercised the exemption options provided to them under the baseline due to any inconsistencies between the FAST Act and the Advisers Act rules. As discussed above, we believe that it is likely that advisers have already exercised any exemption options provided to them by the FAST Act under the baseline if doing so was in their best interest, so we do not expect the magnitude of these effects to be significant. We discuss the amendments' likely impact on efficiency, competition, and capital formation in the next section.

As discussed in the Economic Baseline Section, advisers solely to SBICs are exempt from registering as investment advisers with the Commission. To the extent that any inconsistencies between the FAST Act and Advisers Act rules 203(*l*)–1 and 203(m)–1 have discouraged advisers solely to SBICs from taking advantage of the venture capital fund adviser or private fund adviser exemptions, the proposed amendments could lead these advisers to take on additional venture capital or private fund clients. Such advisers can weigh the additional fee revenue associated with advising non-SBIC private funds against the costs of reporting to the Commission as exempt reporting advisers when determining whether to rely on either of the exemptions. We estimate that the annual cost of filing Form ADV for an exempt reporting adviser is $916.[33] In addition, advisers that switch from exempt to exempt reporting status may incur indirect costs if the information they disclose on Form ADV, such as any disciplinary history, reduces investor demand for their advisory services. We are unable to estimate how many advisers solely to SBICs would choose to take on non-SBIC private funds as a result of the proposal because we do not have information on the demand for their advisory services from non-SBIC private funds or whether any additional business generated would offset these reporting costs. Furthermore, we cannot estimate the extent to which advisers solely to SBICs have been deterred from exercising their option to rely on the venture capital fund adviser and private fund adviser exemptions due to any inconsistencies between the FAST Act and the Advisers Act rules under the baseline.

The proposal provides registered advisers to SBICs and non-SBIC private funds that have not taken advantage of the venture capital fund adviser and private fund adviser exemptions due to inconsistencies between the FAST Act and the Advisers Act rules with clarification on the option to switch from registered investment adviser to exempt reporting adviser status. This option is difficult to value, but its value is broadly determined by the cost reductions associated with the change in registration status compared to the explicit and implicit costs of withdrawing from registration. Advisers that elect to change from registered to exempt reporting adviser status should expect to face reduced ongoing costs associated with filing Form ADV because, as exempt reporting advisers, they would only be required to complete certain portions of Form ADV.[34] We estimate the annual cost savings associated with filing Form ADV as an exempt reporting adviser instead of as a registered investment adviser to be $6,521.[35] Furthermore, such advisers would no longer bear the costs associated with the substantive requirements of being an adviser registered with the Commission.[36] Such advisers would incur the one-time cost of filing a Form ADV–W withdrawal, which we estimate to be $119 per full withdrawal and $13 per partial withdrawal.[37] They may also incur one-time operational costs associated with switching from registered to exempt reporting status, such as those associated with adapting information technology systems to a new reporting regime. Finally, to the extent that advisers benefit from marketing themselves as registered investment advisers to client funds and investors, they will forgo this benefit by withdrawing from registration. Because advisers are not required to rely on either of the exemptions in Advisers Act rules 203(*l*) or 203(m) even though they may qualify for them, we expect only those registered investment advisers that would experience a net benefit by relying on these exemptions and have not already done so following the FAST

[31] Form ADV, Schedule D, Section 2.B. We exclude filings that did not report this value from our calculation so it should be considered a lower bound. Advisers relying on the venture capital fund adviser exemption are not required to answer this question.

[32] *See SBIC Program Overview supra* footnote 6.

[33] ''*Form ADV under the Investment Advisers Act of 1940*'' (Office of Management and Budget ''OMB'' Control No. 3235–0049) Supporting Statement at footnotes 37–42 and accompanying text. The total aggregate annual monetized burden for exempt reporting advisers is estimated to be $2,976,632 assuming there are 3,248 such advisers, resulting in an estimated cost of approximately $916 per exempt reporting adviser. Similarly, the total aggregate annual monetized burden for registered investment advisers is estimated to be $89,427,727 assuming there are 12,024 such advisers, resulting in an estimated cost of approximately $7,437 per registered investment adviser.

[34] Exempt reporting advisers that are not also registering with any state securities authority must complete only the following Items of Form ADV, Part 1A: 1, 2, 3, 6, 7, 10, and 11, as well as corresponding schedules. Exempt reporting advisers that are registering with any state securities authority must complete all of Form ADV. *See Form ADV FAQs supra* footnote 8 at section entitled: ''*Reporting to the SEC as an Exempt Reporting Adviser*''*; General Instructions to Form ADV supra* footnote 8 at Instruction 3.

[35] *See supra* footnote 33. The estimated annual cost of filing Form ADV as a registered investment adviser is approximately $7,437 and the estimated cost for an exempt reporting adviser is approximately $916.

[36] *See supra* footnote 24 for a more detailed list of these requirements.

[37] ''*Rule 203–2 and Form ADV–W under the Investment Advisers Act of 1940*'' (OMB Control No. 3235–0313) Supporting Statement at footnotes 7 and 9 and accompanying text. An adviser would file full withdrawal if it was only registered with the Commission. An adviser would file a partial withdrawal if it was required to remain registered with one or more States. *See Form ADV FAQs supra* footnote 8 at section entitled: ''*Form ADV–W.*''

Act and subsequent Staff Guidance to withdraw from registration.[38]

Investors in private funds, including venture capital funds and SBICs, may experience costs and benefits as a result of the proposed amendments. If investors face fixed costs in transacting with a given adviser, for example in performing any necessary due diligence, they may benefit if the proposed amendments encourage more advisers to advise both SBIC and non-SBIC private funds, allowing investors to consolidate different types of investments with a single adviser. We cannot quantify the extent to which investors prefer to use a single adviser or the number of advisers who will expand into either SBICs or non-SBIC private funds because we do not have the information needed to assess investors' latent demand for consolidated advice services or the number of advisers that have been deterred from expanding their client bases under the baseline. We therefore cannot estimate the magnitude of this potential cost reduction for investors.

In addition, to the extent that the proposed amendments result in advisers changing their status from registered to exempt reporting, it may impose costs on investors. If investors value the transparency provided by complete Form ADV reporting and the safeguards associated with the other substantive requirements of being a registered investment adviser, then the proposed amendments could impose costs on investors if they result in advisers changing their status from registered to exempt reporting. However, such investors have the option of moving their investments to advisers that are registered and, as noted above, we expect that advisers will weigh the benefits and costs associated with remaining registered in connection with any change in reporting status. The proposal could also impose costs on investors if any reduction in transparency or the other substantive requirements associated with registration reduce the ability of the Commission to protect investors from potentially fraudulent investment advisory schemes.

C. Efficiency, Competition, and Capital Formation

As discussed above, because the proposed amendments potentially reduce the reporting requirements for advisers to both SBICs and non-SBIC private funds, they could result in an increased number of advisers in both markets. Advisers solely to SBICs may enter the market for venture capital or other private fund advisory services, and current advisers to non-SBIC private funds may enter the market for SBIC advisory services. In this section, we discuss the potential effects of these changes on efficiency, competition, and capital formation. As was the case above, the economic effects discussed in this section only apply to the extent that advisers have not already exercised the exemption options provided to them under the baseline due to any inconsistencies between the FAST Act and the Advisers Act rules, and we do not expect the magnitude of these effects to be significant.

Changes in the costs of advising both SBIC and non-SBIC private funds, as described above, could have several competitive effects. First, to the extent that non-SBIC private fund advisers find it profitable to enter the market for SBICs under the proposed amendments, the amendments might increase competition in that market, resulting in reduced profits for SBIC advisers and lower advisory fees for their SBICs and their investors. Similarly, to the extent that SBIC advisers find it profitable to enter the non-SBIC private fund advisory market, the proposed amendments might increase competition in that market, resulting in reduced profits for non-SBIC private fund advisers and lower advisory fees for their non-SBIC private funds and their investors. Whether the proposed amendments result in such a reallocation of advisory services depends on whether advisers find it profitable to expand operations into new markets and whether they can do so without changing the quality or quantity of services in current markets. While we cannot precisely estimate the relative likelihood of the above competitive effects, the fact that the market for SBIC advisers is an order of magnitude smaller than the market for non-SBIC private fund advisers suggests that non-SBIC private fund advisers are more likely to have benefitted from expanding into the SBIC market following the FAST Act's enactment, thereby increasing the amount of competition in that market. As discussed above, it is likely that most advisers would have already exercised this option under the baseline if it was in their best interest to do so. Therefore, the competitive effects of the proposed amendments are not likely to be significant.

Any relative shift of advisory talent from one segment of the market to another could also have effects on efficiency and capital formation. To the extent that advisers who expand into new markets as a result of the proposal possess skill in identifying investment opportunities, an increase in the supply of advisers in the SBIC and/or non-SBIC private fund markets could result in more efficient investment decisions and market prices that more accurately reflect the fundamental value of assets where applicable (for example, SBICs invest in private businesses that do not trade on public exchanges, but some private funds invest in publicly-traded securities). Also, any increase in the number of advisers in the SBIC market could make more capital available to small businesses if the increased supply of SBIC advisers attracts more capital to that market. In addition, to the extent that there are economies of scale in the provision of advisory services, advisory services may be provided at lower aggregate cost if the proposed amendments result in an expansion of advisers in either the SBIC or non-SBIC private fund market. To the extent that the proposed amendments result in reduced transparency into advisers because they opt to switch from registered to exempt reporting status, and to the extent that investors rely on that transparency when making investment decisions, the proposed amendments might cause a reduction in the efficiency of investor allocations to these advisers. Any reduction in transparency could also reduce the aggregate amount of capital managed by investment advisers if investors cannot find suitable registered investment advisers as replacements and these investors value transparency more than any benefits, such as potentially lower advisory fees, of the proposed amendments. Finally, if the proposed amendments increase the supply of investment advisers to SBICs and non-SBIC private funds, and these advisers attract assets that were not already invested in other markets, they may increase the aggregate amount of capital investment.

D. Request for Comment

We are requesting comment on our analysis of the potential economic effects of the proposed amendments to Advisers Act rules 203(*l*)–1 and 203(m)–1.

- Are there any other affected parties that we should consider in our analysis?
- Do commenters agree that our quantitative estimates of the costs and benefits are reasonable and accurate? If not, please provide estimates of these costs, and explain why those estimates are different.

[38] An adviser that qualifies for one of these exemptions can still choose to register with the Commission if it has sufficient assets under management. *See Exemptions Release supra* footnote 7 at footnote 24 and accompanying text.

• Are there any other costs to investment advisers, funds, or their investors that we should consider in this analysis? If so, please explain why those costs may be relevant to our analysis, and provide estimates for those costs.

• Are there other effects on efficiency, competition, and capital formation that we should consider in our analysis?

• We have not identified any reasonable alternatives to the proposed amendments. Are there alternative approaches to the proposed amendments that we should consider?

IV. Paperwork Reduction Act Analysis

We do not believe that the proposed amendments to reflect changes made by the FAST Act make any substantive modifications to any existing collection of information requirements or impose any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[39]

The proposed amendments to reflect the changes made by the FAST Act as described in Section II above may shift the number of advisers between each class of advisers as well as include advisers solely to SBICs that take on additional non-SBIC venture capital fund or private fund clients and therefore would become exempt reporting advisers.

However, we do not have information at this time to estimate whether and to what extent these changes may occur and therefore believe that the current burden and cost estimates for the existing collection of information requirements remain appropriate.[40] Thus, we believe that the proposed amendments should not impose substantive new burdens on the overall population of respondents or affect the current overall burden estimates for the affected forms.[41] Accordingly, we are not revising any burden and cost estimates in connection with these amendments. We request comment on whether our belief that the proposed amendments would not impose substantive new burdens on the overall population of respondents or affect the current overall burden estimates for the affected forms is correct.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[42] the Commission hereby certifies that the proposed amendments to Advisers Act rules 203(*l*)–1 and 203(m)–1 would not, if adopted, have a significant economic impact on a substantial number of small entities. Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year (''small adviser'').[43]

Small advisers to SBICs and venture capital funds and small advisers to SBICs and private funds would be generally prohibited from registering with the Commission under section 203A of the Advisers Act because of their assets under management.[44] However, there may be some small advisers to SBICs and venture capital funds and some small advisers to SIBCs and private funds that are not prohibited from registering with the Commission.[45] We believe that small advisers to SBICs and venture capital funds that are not prohibited from registering with the Commission are able to rely on the venture capital fund adviser exemption under section 203(*l*) of the Advisers Act as implemented by Advisers Act rule 203(*l*)–1. We also believe that small advisers to SBICs and private funds that are not prohibited from registering with the Commission are able to rely on the private fund adviser exemption under section 203(m) of the Advisers Act as implemented by Advisers Act rule 203(m)–1. As discussed in Section III above, we do not believe that our proposed amendments, if adopted, would result in a significant economic impact. Also, we do not know the exact number of advisers to SBICs. However, as of the end of 2016, there were 313 SBICs licensed by the SBA.[46] Even if we assume that there is a separate adviser for each SBIC, the maximum number of advisers to SBICs would be only 313. We believe that only a small subset of these 313 advisers would meet the definition of small adviser described above. For these reasons, the Commission preliminarily believes that the proposed amendments to Advisers Act rules 203(*l*)–1 and 203(m)–1 would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission requests written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small businesses and provide empirical data to support the extent of the impact.

VI. Consideration of the Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[47] we must advise the Office of Management and Budget whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Authority

The Commission is proposing to amend rule 203(*l*)–1 under the authority set forth in sections 211(a) and 203(*l*) of the Advisers Act, (15 U.S.C. 80b–11(a) and 80b–3(*l*), respectively). The Commission is proposing to amend rule

[39] 44 U.S.C. 3501 *et seq.*

[40] The most recent Paperwork Reduction Act analysis for Form ADV, which is pending approval by the Office of Management and Budget, is based upon the number of registered advisers and exempt reporting advisers as of May 1, 2016. Because approximately five months had passed between the signing of the FAST Act and May 1, 2016, we believe that most of the advisers who wanted to change their registration status as a result of the FAST Act, did so in that five month period and are therefore included in the most recent Paperwork Reduction Act analysis for Form ADV. ''*Form ADV under the Investment Advisers Act of 1940*'' (OMB Control No. 3235–0049).

[41] *See* Section III above.

[42] 5 U.S.C. 605(b).

[43] Rule 0–7(a) (17 CFR 275.0–7(a)).

[44] Section 203A(a)(1)(A) of the Advisers Act generally prohibits an investment adviser regulated as an investment adviser by the State in which it maintains its principal office and place of business from registering with the Commission unless the adviser has at least $25 million of assets under management. Section 203(A)(a)(2) further prohibits certain advisers from registering with the Commission unless they have at least $100 million of assets under management.

[45] For example, the prohibition of Advisers Act section 203A(a) does not apply to advisers that are required by the laws of 15 or more States to register as an investment adviser with the state securities authority in the respective States. Advisers Act rule 203A–2(d) (17 CFR 275. 203A–2(d)).

[46] *See SBIC Program Overview supra* footnote 6.

[47] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

203(m)–1 under the authority set forth in sections 211(a) and 203(m) of the Advisers Act (15 U.S.C. 80b–11(a) and 80b–3(m), respectively).

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

VIII. Text of Proposed Rule Amendments

For the reasons set forth in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Amend section 275.203(*l*)–1 by revising the introductory text to paragraph (a) to read as follows:

§ 275.203(*l*)–1 Venture capital fund defined.

(a) *Venture capital fund defined.*– For purposes of section 203(*l*) of the Act (15. U.S.C. 80b–3(l)), a venture capital fund is any entity described in subparagraph (A), (B), or (C) of section 203(b)(7) of the Act (15 U.S.C. 80b–3(b)(7)) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53)) or any private fund that:

* * * * *

■ 3. Amend section 275.203(m)–1 by revising paragraph (d)(1) to read as follows:

§ 275.203(m)–1 Private fund adviser exemption.

* * * * *

(d) * * *

(1) Assets under management means the regulatory assets under management as determined under Item 5.F of Form ADV (§ 279.1 of this chapter) except that the regulatory assets under management attributable to a private fund that is an entity described in subparagraph (A), (B), or (C) of section 203(b)(7) of the Act (15 U.S.C. 80b–3(b)(7)) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53)) shall be excluded from the definition of assets under management for purposes of this section.

* * * * *

By the Commission.

Dated: May 3, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–09334 Filed 5–8–17; 8:45 am]

BILLING CODE 8011–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AE55

Project KISS

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for Information.

SUMMARY: In order to reduce regulatory burdens and costs in the markets that the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') oversees, the Commission is seeking suggestions from the public about how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner.

DATES: Suggestions must be received on or before September 30, 2017.

ADDRESSES: You may submit suggestions, identified by RIN number 3038–AE55, by any of the following methods:

- The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting a Project KISS suggestion through the Public Comment Form.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your suggestions using only one method.

FOR FURTHER INFORMATION CONTACT: Michael Gill, Regulatory Reform Officer, (202) 418–5713, *mgill@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW., Washington, DC 20581; or *KISS@cftc.gov.*

SUPPLEMENTARY INFORMATION: On February 24, 2017, President Donald J. Trump issued Executive Order 13777: Enforcing the Regulatory Reform Agenda (''E.O. 13777''). E.O. 13777 directs federal agencies, among other things, to designate a Regulatory Reform Officer and establish a Regulatory Reform Task Force. Although the CFTC, as an independent federal agency,[1] is not bound by E.O. 13777, the Commission is nevertheless commencing an agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly. This initiative is called Project KISS, which stands for ''Keep It Simple Stupid.'' [2] In support of these efforts, the Commission has approved the solicitation of suggestions from the public regarding how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner. The public may submit Project KISS suggestions through the Public Comment Form on the Commission's Web site, at *http://comments.cftc.gov.*

The Commission is not asking the public to identify rules for revocation, suspension, annulment, withdrawal, limitation, amendment, modification, conditioning or repeal. The submission of a Project KISS suggestion will not constitute a petition for issuance, amendment, or repeal of a rule pursuant to § 13.2 of the Commission's regulations,[3] nor will it constitute a request for an exemptive, no-action, or interpretive letter pursuant to § 140.99 of the Commission's regulations.[4] The Commission will treat Project KISS suggestions like the Commission treats other correspondence that it receives. Submission of a Project KISS suggestion may not result in Commission action.

All suggestions must be submitted in English, or if not, accompanied by an English translation. Suggestions will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish to submit information that you believe is exempt from disclosure under the Freedom of Information Act in your suggestion(s), please submit your suggestion(s) via Mail or Hand Delivery/Courier and also submit a petition for confidential treatment of the exempt information according to the procedures established in § 145.9 of the Commission's regulations.[5]

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[1] Independent federal agencies exist outside of the federal executive departments headed by a Cabinet secretary and the Executive Office of the President. *See Humphrey's Executor* v. *United States,* 295 U.S. 602 (1935); 5 U.S.C. 104.

[2] *See* Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, Mar. 15, 2017, available at *http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20.*

[3] 17 CFR 13.2.

[4] 17 CFR 140.99.

[5] 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your suggestion(s) from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as a suggestion containing obscene language. Any suggestions that contain comments on the merits of an outstanding proposed rulemaking will be retained in the public comment file for that rulemaking and considered as required under the Administrative Procedure Act and other applicable laws. All suggestions that have been redacted or removed that contain comments on the merits of an outstanding proposed rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Issued in Washington, DC, on May 3, 2017, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

Appendix to Project KISS—Commission Voting Summary

On this matter, Acting Chairman Giancarlo and Commissioner Bowen voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2017–09318 Filed 5–8–17; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100 and 165

[Docket Number USCG–2017–0224]

RIN 1625–AA08, AA00

Special Local Regulations; Safety Zones; Recurring Marine Events in Sector Columbia River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation in the Coast Guard Captain of the Port Columbia River Zone for recurring marine events. During the recurring events, these regulated areas would be activated and would restrict vessels from portions of the waterway. These events were previously published as safety zones, temporary safety zones or individual regulated areas and have been revised and consolidated into a single as special local regulation in order to expedite public notification of events and ensure the protection of the maritime public from hazards associated with the annual events. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 8, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0224 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Laura Springer, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Swim events and marine events are held on an recurring basis on the navigable waters within the Coast Guard COTP Columbia River Zone. In the past, the Coast Guard established special local regulations with regulated areas and safety zones for these recurring events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. The Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from these annually recurring events.

This proposed rule would consistently apprise the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations. The table in this proposed rule would list each annual recurring event requiring a regulated area as administered by the Coast Guard.

By establishing permanent regulations containing these events the Coast Guard would eliminate the need to establish temporary rules for events that occur on an annual basis and thereby limit the costs associated with cumulative regulations.

This rulemaking would remove, add, and consolidate regulations to better meet the Coast Guard's intended purpose of ensuring safety during these events. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231 and 1233.

III. Discussion of Proposed Rule

The Coast Guard proposes to revise and rename 33 CFR 100.1302 to cover marine events within the Captain of the Port Zone Columbia River. We also propose to remove §§ 100.1303 (Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races), 100.1305 (Richland, Washington, west coast outboard championship hydro races), 165.1341 (Portland Dragon Boat Races, Portland, OR), and 165.1342 (Annual Roy Webster Cross-Channel Swim, Columbia River, Hood River, OR).

These proposed changes will convert two existing safety zones (those currently in §§ 165.1341 and 165.1342) and temporary safety zones established annually for four events (The Big Float, Swim the Snake, Richland Regatta, and Columbia Crossing) into regulated areas in § 100.1302. This is intended to consolidate and simplify our existing special local regulations. We are removing the West Coast Outboard Championship Hydro races regulations in § 100.1305 because that race has not been held for a number of years.

By establishing a single permanent regulation containing these events, the Coast Guard will eliminate the need to establish temporary rules for events that occur on an annual basis. This provides opportunity for the public to comment while limiting the unnecessary burden of continually establishing temporary rules every year.

Additionally, this rule proposes to reorganize and consolidate existing Sector Columbia River COTP Zone marine event regulations in 33 CFR part 100 and marine event safety zones under 33 CFR part 165. This action will eliminate the burden and confusion caused by the current configuration of numerous individual regulations spread across two CFR parts.

As large numbers of spectator vessels and marine traffic are expected to congregate around the event location, the regulated areas are needed to protect both spectators and participants from the safety hazards associated with the event. During the enforcement period of the regulated areas, persons and vessels would be prohibited from entering, transiting through, remaining, anchoring or mooring within the zone unless specifically authorized by the COTP or the designated representative. The Coast Guard may be assisted by other Federal,

State and local agencies in the enforcement of these regulated areas. These events are listed below in the text of the regulation.

Certain special local regulations are listed without known dates or times. Coast Guard Sector Columbia River will cause notice of the enforcement of these regulated areas to be made by all appropriate means to affect the widest publicity among the effected segments of the public, including publication in the **Federal Register**, Local Notice to Mariners and Broadcast Notice to Mariners.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The Coast Guard has previously promulgated special local regulations or safety zones, in 33 CFR parts 100 and 165, for all event areas contained within this proposed regulation and has not received notice of any negative impact caused by any of the safety zones or special local regulations. By establishing a permanent regulation containing all of these events, the Coast Guard will eliminate the need to establish individual temporary rules for each separate event that occurs on an annual basis, thereby limiting the costs of cumulative regulations.

Vessels will only be restricted from special local regulation areas for a short duration of time. Vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas. Notifications of exact dates and times of the enforcement period will be made through notices of enforcements published in the **Federal Register**. In addition, we will inform the local maritime community via the Local Notice to Mariners, Broadcast Notice to Mariners, or both. No new or additional restrictions would be imposed on vessel traffic.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves regulated areas for swim events and other marine events. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

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

List of Subjects in 33 CFR Part 100 and Part 165

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways, Harbors, Security measures.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Revise § 100.1302 to read as follows:

§ 100.1302 Special Local Regulations; Marine Events Within the Captain of the Port Zone Columbia River.

This section applies to the marine events listed in Table 1 of this section. The regulations in this section will be enforced for the duration of each event, on or about the dates indicated in Table 1 of this section. Annual notice of the exact dates and times of the effective period of the regulations in this section with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be provided to the local maritime community through the Local Notice to Mariners, Broadcast Notice to Mariners, or both, well in advance of the events. If the event does not have a date listed, then the exact dates and times of the enforcement will be announced through a Notice of Enforcement in the **Federal Register**. Mariners should consult the **Federal Register** or their LNM to remain apprised of minor schedule or event changes. Thirteenth Coast Guard District LNM can be found at: *http://www.navcen.uscg.gov/.* The application requirements of § 100.15 apply to all marine events listed in the Table of this section.

(a) The Coast Guard may patrol each event area under the direction of a designated Coast Guard Patrol Commander (PATCOM). PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.'' Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Columbia River.

(b) PATCOM may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(c) PATCOM may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

(d) Vessels may not transit the regulated areas without PATCOM approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(e) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through LNM, unless authorized by an official patrol vessel.

TABLE 1

[All coordinates listed in the Table reference Datum NAD 1983]

No./Date	Event	Sponsor	Location
1. First or second weekend in June.	Rose Fest Dragon Boat Races.	Portland-Kaohsiung Sister Association.	Portland, OR. Regulated area includes all waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge.
2. One day in May or June	Spring Testing Hydroplane races.	Tri-Cities Water Follies Association.	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
3. Second weekend in June	Richland Regatta Hydroplane races.	Northwest Power Boat Association.	Richland, WA. Regulated area includes all navigable waters of the Columbia River in the vicinity of Howard Amon Park, between River Miles 337 and 338.

TABLE 1—Continued

[All coordinates listed in the Table reference Datum NAD 1983]

No./Date	Event	Sponsor	Location
4. Last Tuesday through Sunday in July.	Kennewick Hydroplane Races.	Tri-Cities Water Follies Association.	Kennewick, WA. Regulated area includesall navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
5. One Saturday in July	The Big Float, group inner-tube float.	Human Access Project	Portland, OR. Regulated area includes all navigable waters of the Willamette River, in Portland, Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N.; 122°40′21″ W., and running south to the Marquam Bridge at approximate location 45°30′27″ N.; 122°40′11″ W.
6. Second Saturday in August.	Swim the Snake	Blue Mountain Resource Conservation and Development.	Perry, WA. Regulated area includes all navigable waters, bank-to-bank of the Snake River, 500 yards upstream and 500 yards downstream from the Washington State Highway 261 Bridge at the approximate position of 46°35′23″ N.; 118°13′10″ W.
7. Annually on Labor Day	Roy Webster Cross Channel Swim.	Hood River County Chamber of Commerce.	Hood River, OR. Regulated area includes all waters of the Columbia River between River Mile 169 and River Mile 170.
8. First or second weekend in September.	Portland Dragon Boat Races.	DragonSports USA	Portland, OR. Regulated area includes the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR: line one starting at 45–30′49″ N./122–40′24″ W. then heading east to 45–30′49″ N./122–40′22″ W. then heading south to 45–30′29″ N./122–40′08″ W. then heading west to 45–30′26″ N./122–40′14″ W. then heading north ending at 45–30′49″ N./122–40′24″ W.
9. First Saturday after Labor Day weekend.	Columbia Crossing Swim ..	3 Rivers Road Runners	Pasco, WA. Regulated area includes all navigable waters, bank-to-bank of the Columbia River in Pasco, Washington, between river mile 332 and river mile 335.

§§ 100.1303 and 100.1305 [Removed]

■ 3. Remove §§ 100.1303 and 100.1305

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6; Department of Homeland Security Delegation No. 0170.1.

§§ 165.1341 and 165.1342 [Removed]

■ 5. Remove §§ 165.1341 and 165.1342

Dated: April 21, 2017.

B.C. McPherson,

Captain, U.S. Coast Guard, Acting Commander, Thirteenth Coast Guard District.

[FR Doc. 2017–09368 Filed 5–8–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170314267–7267–01]

RIN 0648–BG48

Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 10

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

ACTION: Proposed rule; request for comments.

SUMMARY: We are proposing to approve and implement regulations submitted by the New England and Mid-Atlantic Fishery Management Councils in Framework Adjustment 10 to the Monkfish Fishery Management Plan. This action would set monkfish specifications for fishing years 2017–2019 (May 1, 2017, through April 30, 2020). This action would also increase current days-at-sea allocations and trip limits to provide additional operational flexibility and fishing opportunities. This action is needed to allow the fishery to more effectively harvest its optimum yield.

DATES: Public comments must be received by May 24, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0026, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0026,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Comments on Monkfish Framework 10.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

New England Fishery Management Council staff prepared an environmental assessment (EA) for Monkfish Framework Adjustment 10 that describes the proposed action and other considered alternatives. The EA provides a thorough analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives, a preliminary Regulatory Impact Review, and economic analysis. Copies of the Framework 10 EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following Internet addresses: *http://www.greateratlantic.fisheries.noaa.gov/* or *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281–9182.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed under the Monkfish Fishery Management Plan (FMP) by the New England and the Mid-Atlantic Fishery Management Councils. The fishery extends from Maine to North Carolina from the coast out to the end of the continental shelf. The Councils manage the fishery as two management units, with the Northern Fishery Management Area (NFMA) covering the Gulf of Maine (GOM) and northern part of Georges Bank, and the Southern Fishery Management Area (SFMA) extending from the southern flank of Georges Bank through Southern New England and into the Mid-Atlantic Bight to North Carolina.

The monkfish fishery is primarily managed by landing limits and a yearly allocation of monkfish days-at-sea (DAS) calculated to enable vessels participating in the fishery to catch, but not exceed, the target total allowable landings (TAL) and the annual catch target ((ACT), which is the TAL plus an estimate of expected discards) for each management area. Both the ACT and the TAL are calculated to maximize yield in the fishery over the long term. Based on a yearly evaluation of the monkfish fishery, the Councils may revise existing management measures through the framework provisions of the FMP to better achieve the goals and objectives of the FMP and achieve optimum yield, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The monkfish fishery has not fully harvested its quota since 2011. The fishery harvested less than 70 percent of its quota in the last three years (Table 1). The Councils developed Framework 10 to enhance the operational efficiency of existing management measures in an effort to better achieve optimum yield.

TABLE 1—MONKFISH LANDINGS COMPARISON FOR FISHING YEARS 2013–2015

Management area	Target TAL (mt) for fishing years 2013–2015	2013 Landings (mt)	2014 Landings (mt)	2015 Landings (mt)	Average % of TAL landed 2013–2015
NFMA	5,854	3,596	3,403	4,080	63
SFMA	8,925	5,088	5,415	4,733	57

Proposed Measures

1. Establish Specifications for Fishing Years 2017–2019

This action proposes to increase monkfish quotas for the next three fishing years (Table 2). Findings from the 2016 monkfish operational assessment support these quota increases. The 2016 assessment did update several indicators including commercial fishery statistics, fishery-independent survey indices, and fishery performance indices. The 2016 operational assessment also provided a plan for setting catch advice. It should be noted, though, that the 2016 monkfish operational assessment did not update the population model used in previous assessments because new information revealed problems with the methods used to estimate monkfish age and growth. Despite this, based on updated data from the assessment, the New England Fishery Management Council's Scientific and Statistical Committee (SSC) recommended retaining the status quo overfishing limit (OFL) and allowable biological catch limit (ABC) for both management areas for fishing years 2017–2019 (May 1, 2017, through April 30, 2020). The OFL would be 17,805 mt for the NFMA and 23,204 mt for the SFMA. The ABC, which equals the annual catch limit (ACL), would stay at 7,592 mt for the NFMA and 12,316 for the SFMA.

Framework 10 updates the discard rates for both management areas based on catch data updated in the 2016 operational assessment (Table 1). The previous discard rate is calculated as the ratio of discards to catch from fishing years 2004–2006. The proposed discard rate would use discard information from fishing years 2013–2015. The proposed changes would increase the discard rate in the NFMA from 10.9 percent to 13.9 percent, and from 22.5 percent to 24.6 percent in the SFMA.

The proposed TALs would increase because of modifications to the management uncertainty buffers. Framework 10 proposes to reduce the management uncertainty buffers in both management areas to 3 percent (Table 2). The current management uncertainty buffers are 13.5 percent in the NFMA and 6.5 percent in the SFMA. The approach used to calculate discards has performed well in the past; an adequate amount of discards has been forecasted, reducing the likelihood of the ACL being exceeded. Further, the TALs have been consistently underharvested in both areas (Table 1). For these reasons, this action proposes to reduce the management uncertainty buffer.

TABLE 2—PROPOSED SPECIFICATION CHANGES IN FRAMEWORK ADJUSTMENT 10

Management area	Management uncertainty buffer		Discard rate		Total allowable landings (TAL)		TAL change (%)
	Current (%)	Proposed (%)	Current (%)	Proposed (%)	Current (mt)	Proposed (mt)	
NFMA	13.5	3	10.9	13.9	5,854	6,338	8.27
SFMA	6.5	3	22.5	24.6	8,925	9,011	0.96

2. Monkfish DAS and Trip Limit Increases

Framework 10 proposes trip limit increases in both management areas as well as a DAS increase in the SFMA.

In the NFMA, incidental landing limits for vessels fishing on a groundfish DAS would increase from 600 lb (272 kg) to 900 lb (408 kg) tail weight/DAS for Category C permitted vessels and from 500 lb (227 kg) to 750 lb (340 kg) tail weight/DAS for Category D permitted vessels. Vessels targeting groundfish land most of the monkfish in the NFMA. Increasing the incidental trip limits for vessels targeting groundfish may increase monkfish landings; however, analyses suggest that a substantial increase is unlikely. This measure would reduce the administrative burden for most Category C and D permitted vessels because they would no longer need to declare a monkfish DAS to retain a higher monkfish possession limit. Increasing the incidental trip limit would also allow these vessels to retain additional monkfish that otherwise would have been discarded when fishing solely on a groundfish DAS under the current (lower) trip limits.

In the SFMA, the DAS allocation and trip limits would increase by 15 percent. Monkfish permitted vessels could fish in the SFMA for 37 DAS. Trip limits for permit Category A and C vessels would increase from 610 lb (277 kg) to 700 lb (318 kg) tail weight/DAS and from 500 lb (227 kg) to 575 lb (261 kg) tail weight/DAS for Category B and D permitted vessels. The majority of monkfish landings in the SFMA come from vessels directly targeting monkfish. Vessels directing on monkfish in the SFMA are more restricted by DAS allocations and trip limits than vessels fishing in the NFMA. Therefore, these trip limit and DAS increases are projected to generate more fishing opportunities and landings in the SFMA.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Monkfish FMP, Framework 10, 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 Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this action, if adopted, would not have a significant economic effect on a substantial number of small entities.

As outlined in the preamble of this rule, the purpose of this action is to implement Framework 10 to the Monkfish FMP. Framework 10 would set monkfish specifications for fishing years 2017–2019. As proposed, the TAL of monkfish in both the NFMA and SFMA would increase slightly. This action would also increase trip limits in both management areas and the DAS allocations that could be fished in the SFMA. As a result, this action would increase operational flexibility, fishing opportunities, and revenue. Current monkfish quotas have been underharvested for the past several years. This framework is needed to allow the fishery to more effectively harvest its optimum yield. This action seeks to fulfill the purpose and need while meeting the overarching goals and objectives of the Monkfish FMP.

As of May 1, 2015 (beginning of fishing year 2015), NMFS had issued 798 limited-access monkfish permits. Ownership entities are identified on June 1st of each year based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Northeast Federal fishing permit. The current ownership data set is based on calendar year 2015 permits and contains gross sales associated with those permits for calendar years 2013 through 2015.

For RFA purposes only, 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 engaged in commercial fishing (NAICS code 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 has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2013 through 2015.

Ownership data collected from permit holders indicate that there are 390 distinct business entities that hold at least one limited-access monkfish permit. Of these 390 entities, 34 do not have revenues (are inactive). Of the 390 entities, 382 entities are categorized as small and 8 are categorized as large entities per the NMFS guidelines. All 390 entities could be directly regulated by this proposed action. There are 38 entities that are ''monkfish dependent'' (greater than 50 percent of the entity's gross sales are from the sales of monkfish) and all are considered small entities.

This action, which updates specifications and increases DAS and trip limits, would provide monkfish fishermen with additional fishing opportunities and enhance their operational flexibility.

The measures proposed in Framework 10 are expected to have a positive economic effect on small entities. It could further increase catch per unit effort; well accepted economic theory holds that this will result in increased profitability, all else held constant. Providing increased fishing opportunities should increase landings and profits.

This action is not expected to have a significant economic impact on a substantial number of small entities. The effects on the regulated small entities identified in this analysis are expected to be positive relative to the no action alternative, which would result in lower TALs, fewer DAS, and lower trip limits than the proposed action. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profit for any small entities. As a result, an initial regulatory

flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 4, 2017.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.92, revise paragraph (b)(1)(ii) to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(ii) *DAS restrictions for vessels fishing in the SFMA.* A vessel issued a limited access monkfish permit may not use more than 37 of its 46 monkfish DAS allocation in the SFMA during each fishing year. Each vessel issued a limited access monkfish permit fishing in the SFMA must declare that it is fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

* * * * *

■ 3. In § 648.94, revise paragraphs (b)(2)(i) and (ii) and (b)(3)(i) to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(2) *Vessels fishing under the monkfish DAS program in the SFMA*—(i) *Category A, C, and G vessels.* A vessel issued a limited access monkfish Category A, C, or G permit that fishes under a monkfish DAS in the SFMA may land up to 700 lb (318 kg) tail weight or 2,037 lb (924 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail-only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B, D, and H vessels.* A vessel issued a limited access monkfish Category B, D, or H permit that fishes under a monkfish DAS in the SFMA may land up to 575 lb (261 kg) tail weight or 1,673 lb (759 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail-only weight landed, the vessel may land up to 1.91 lb (0.87) of monkfish heads only, as described in paragraph (a) of this section.

* * * * *

(3) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program*—(i) *NFMA.* Unless otherwise specified in paragraph (b)(1) of this section, a vessel issued a limited access monkfish Category C permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 900 lb (408 kg) tail weight or 2,619 lb (1,188 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A vessel issued a limited access monkfish Category D permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 750 lb (340 kg) tail weight or 2,183 lb (990 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A vessel issued a limited access monkfish Category C, D, or F permit participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), is also subject to the incidental landing limit specified in paragraph (c)(1)(i) of this section on such trips.

* * * * *

[FR Doc. 2017–09363 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 88
Tuesday, May 9, 2017

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

Agricultural Marketing Service

[Document No. AMS–LPS–16–0117]

2017 Rates Charged for AMS Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the 2017 rates it will charge for voluntary grading, inspection, certification, auditing and laboratory services for a variety of agricultural commodities including meat and poultry, fruits and vegetables, eggs, dairy products, and cotton and tobacco. The 2017 regular, overtime, holiday, and laboratory services rates will be applied at the beginning of the crop year, fiscal year or as required by law (June 1 for most cotton programs) depending on the commodity. Other starting dates are added to this notice based on cotton industry practices. This action establishes the rates for user-funded programs based on costs incurred by AMS.

DATES: May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Sonia Jimenez, AMS, U.S. Department of Agriculture, Room 2095–S, 1400 Independence Ave. SW., Washington, DC 20250; telephone (202) 720–6766, fax (202) 205–5772; email *sonia.jimenez@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621–1627), provides for the collection of fees to cover costs of various inspection, grading, certification or auditing services covering many agricultural commodities and products. The AMA also provides for the recovery of costs incurred in providing laboratory services. The Cotton Statistics and Estimates Act (7 U.S.C. 471–476) and the U.S. Cotton Standards Act (7 U.S.C. 51–65) provide for classification of cotton and development of cotton standards materials necessary for cotton classification. The Cotton Futures Act (7 U.S.C. 15b) provides for futures certification services and the Tobacco Inspection Act (7 U.S.C. 511–511s) provides for tobacco inspection and grading. These Acts also provide for the recovery of costs associated with these services.

On November 13, 2014, the Department of Agriculture (Department) published in the **Federal Register** a final rule that established standardized formulas for calculating the fees charged by AMS user-funded programs (79 FR 67313). Every year since then, the Department has published in the **Federal Register** a notice announcing the rates for its user –funded programs.

This notice announces the 2017 fee rates for voluntary grading, inspection, certification, auditing and laboratory services for a variety of agricultural commodities including meat and poultry, fruits and vegetables, eggs, dairy products, and cotton and tobacco on a per-hour rate and, in some instances, the equivalent per-unit cost. The per-unit cost is provided to facilitate understanding of the costs associated with the service to the industries that historically used unit-cost basis for payment. The fee rates will be effective at the beginning of the fiscal year, crop year, or as required by specific laws (June 1 for most cotton programs). The cotton futures-related services effective date has been changed to August 1 to allow for cotton contracts to expire before starting a new fee rate.

The rates reflect direct and indirect costs of providing services. Direct costs include the cost of salaries, employee benefits, and if applicable, travel and some operating costs. Indirect or overhead costs include the cost of Program and Agency activities supporting the services provided to the industry. The formula used to calculate these rates also includes operating reserve, which may add to or draw upon the existing operating reserves.

These services include the grading, inspection or certification of quality factors in accordance with established U.S. Grade Standards; audits or accreditation according to International Organization for Standardization (ISO) standards and/or Hazard Analysis and Critical Control Point (HACCP) principles; and other marketing claims. The quality grades serve as a basis for market prices and reflect the value of agricultural commodities to both producers and consumers. AMS' grading and quality verification and certification, audit and accreditation, plant process and equipment verification, and laboratory approval services are voluntary tools paid for by the users on a fee-for-service basis. The agriculture industry can use these tools to promote and communicate the quality of agricultural commodities to consumers. Laboratory services are provided for analytic testing, including but not limited to chemical, microbiological, biomolecular, and physical analyses. AMS is required by statute to recover the costs associated with these services.

As required by the Cotton Statistics and Estimates Act (7 U.S.C. 471–476), consultations regarding the establishment of the fee for cotton classification with U.S. cotton industry representatives are held in the beginning of the year when most industry stakeholder meetings take place. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were informed of the fees during various industry-sponsored forums.

Rates Calculations

AMS calculated the rate for services, per hour per program employee, using the following formulas (a per-unit base is included for programs that charge for services on a per-unit basis):

(1) *Regular rate.* The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours for the previous year, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then

multiplied by 1.5, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

When possible, AMS is adjusting the rates to cover all of its expenses and to provide for reasonable operating reserves. Many of these rates were not adjusted for a number of years. In some cases fees are decreased due to efficiencies and cost cutting measures. Applying the formulas described above without consideration of the operating reserves, in some cases, would have resulted in a substantial increase in fees. Last year, AMS started the process of adjusting some of the rates to recover costs associated with providing these services. To avoid an undue burden on industry operations in these cases, AMS started to phase in some of the increases over a multi-year period. AMS continued this process and reassessed whether the fee rates and phase-in period were appropriate based on the formula and established operating reserve. Fees are being adjusted accordingly. Drawing upon the existing operating reserves will not affect AMS' ability to maintain the minimally required operating reserves.

All rates are per-hour except when a per-unit cost is noted. The specific amounts in each rate calculation are available upon request from the specific AMS program.

2017 RATES

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
Cotton Fees					
7 CFR Part 27—Cotton Classification Under Cotton Futures Legislation Subpart A—Regulations; §§ 27.80—27.90 Costs of Classifications and Micronaire					
Cotton Standardization					
Certification for Futures Contract (Grading services for samples submitted by CCC-licensed samplers).	$4.25/bale			X	August 1, 2017.
Transfer of Certification Data to New Owner or Certified Warehouse (Electronic transfer performed).	$0.20/bale or $5.00 per page minimum			X	August 1, 2017.
7 CFR Part 28—Cotton Classing, Testing, and Standards Subpart A—Regulations Under the United States Cotton Standards Act; §§ 28.115–28.126 Fees and Costs Subpart D—Cotton Classification and Market News Service for Producers; § 28.909 Costs; § 28.910 Classification of Samples and Issuance of Classification Data; § 28.911 Review Classification					
Cotton Grading					
Form 1: Grading Services for Producers (submitted by licensed sampler).	$2.30/bale			X	July 1, 2017.
Form 1 Review (new sample submitted by licensed sampler)	$2.30/bale			X	July 1, 2017.
Form A Determinations (sample submitted by licensed warehouse).	$2.30/bale			X	July 1, 2017.
Form C Determinations (sample submitted by non-licensed entity; bale sampled under USDA supervision).	$2.30/bale			.....	July 1, 2017.
Form D Determination (sample submitted by owner or agent; classification represents sample only).	$2.30/bale			X	July 1, 2017.
Foreign Growth Classification (sample of foreign growth cotton submitted by owner or agent; classification represents sample only).	$6.00/sample			X	August 1, 2017.
Arbitration (comparison of a sample to the official standards or a sample type).	$6.00/sample			X	August 1, 2017.
Practical Cotton Classing Exam (for non-USDA employees)	Exam: $150/applicant Reexamination: $130/applicant			X	July 1, 2017.
Special Sample Handling (return of samples per request)	$0.50/sample			X	July 1, 2017.
Electronic Copy of Classification Record	$0.05/bale ($5.00/month minimum with any records received)			X	July 1, 2017.
Form A Rewrite (reissuance of Form 1, Form A, or Futures Certification data or combination).	$0.15/bale or $5.00/page minimum			X	August 1, 2017.

2017 RATES—Continued

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
Form R (reissuance of Form 1 classification only)	$0.15/bale or $5.00/page minimum			X	July 1, 2017.
International Instrument Level Assessment	$4.00/sample			X	July 1, 2017.
Dairy Fees					
7 CFR Part 58—Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products; §§ 58.38–58.46 Fees and Charges					
Continuous Resident Grading Service	$76.00	$90.92	$107.24	X	Oct 1, 2017.
Non-resident and Intermittent Grading Service; State Graders; Equipment Review.	82.00	96.76	116.64	X	Oct 1, 2017.
Non-resident Services 6 p.m.–6 a.m. (10 percent night differential).	90.20	106.44	128.32	X	Oct 1, 2017.
Export Certificate Services	82.00	N/A	N/A		Oct 1, 2017.
Special Handling	41.00	N/A	N/A		Oct 1, 2017.
Fax Charge	4.00	N/A	N/A		Oct 1, 2017.
Derogation Application	123.00	N/A	N/A		Oct 1, 2017.
Fruit and Vegetable Fees					
7 CFR Part 51—Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards) Subpart A—Regulations; §§ 51.37–51.44 Schedule of Fees and Charges at Destination Markets; § 51.45 Schedule of Fees and Charges at Shipping Point Areas					
Quality and Condition Inspections for Whole Lots	$191.00 per lot				Oct 1, 2017.
Quality and Condition Half Lot or Condition-Only Inspections for Whole Lots.	$159.00 per lot				Oct 1, 2017.
Condition—Half Lot	$146.00 per lot				Oct 1, 2017.
Quality and Condition or Condition-Only Inspections for Additional Lots of the Same Product.	$87.00 per lot				Oct 1, 2017.
Dockside Inspections—Each package weighing <30 lbs	$0.044 per pkg.				Oct 1, 2017.
Dockside Inspections—Each package weighing >30 lbs	$0.068 per pkg.				Oct 1, 2017.
Charge per Individual Product for Dockside Inspection	$174.00 per lot				Oct 1, 2017.
Charge per Each Additional Lot of the Same Product	$79.00 per lot				Oct 1, 2017.
Inspections for All Hourly Work	$85.00	$112.00	$148.00		Oct 1, 2017.
Audit Services	$108.00				Oct 1, 2017.
7 CFR Part 52—Processed Fruits and Vegetables, Processed ProductsThereof, and Other Processed Food Products Subpart—Regulations Governing Inspection and Certification; §§ 52.41–52.51 Fees and Charges					
Lot Inspections	$75.00	$95.00	$116.00	X	Oct 1, 2017.
In-plant Inspections Under Annual Contract (year-round)	72.00	92.00	112.00	X	Oct 1, 2017.
Additional Graders (in-plant) or Less Than Year-Round	83.00	106.00	128.00	X	Oct 1, 2017.
Audit Services	$108.00				Oct 1, 2017.
Meat and Livestock Fees					
7 CFR Part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards) Subpart A—Regulations; §§ 54.27–54.28 Charges for Service					
Commitment Grading	$66.00	$83.00	$100.00	X	Oct 1, 2017.

2017 RATES—Continued

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
Non-commitment Grading	87.00	103.00	120.00		Oct 1, 2017.
Night Differential (6 p.m.–6 a.m.)	73.00	91.00	109.00		Oct 1, 2017.
7 CFR Part 62—Livestock, Meat and Other Agricultural Commodities (Quality Systems Verification Programs) Subpart A—Quality Systems Verification Definitions; § 62.300 Fees and Other Costs for Service					
Auditing Activities	$108.00				Oct 1, 2017.
7 CFR Part 75—Regulations for Inspection and Certification of Quality of Agricultural and Vegetable Seeds § 75.41 General					
Laboratory Testing	$58.00	$86.00	$115.00	X	Oct 1, 2017.
Administrative Fee	$14.50 per certificate				Oct 1, 2017.
Poultry Fees					
7 CFR Part 56—Voluntary Grading of Shell Eggs Subpart A—Grading of Shell Eggs; §§ 56.45–56.54 Fees and Charges **7 CFR Part 70—Voluntary Grading of Poultry and Rabbit Products** Subpart A-Grading of Poultry and Rabbit Products; §§ 70.70–70.78 Fees and Charges					
Resident Service (in-plant)	[1] $48.00	[2] $56.00	[2] $81.00	X	Oct 1, 2017.
Resident, Night Differential (6 p.m.–6 a.m.)	[2] 51.00	[2] 62.00	[2] 88.00	X	Oct 1, 2017.
Resident, Sunday Differential	[2] 58.00	[2] 69.00	N/A	X	Oct 1, 2017.
Resident, Sunday and Night Differential	[2] 63.00	[2] 72.00	N/A	X	Oct 1, 2017.
Fee Service (non-scheduled)	78.00	97.00	117.00		Oct 1, 2017.
Audit Service	$108.00				Oct 1, 2017.
Science and Technology Fees					
7 CFR Part 91—Services and General Information (Science and Technology) Subpart I—Fees and Charges; §§ 91.37–91.45					
Laboratory Testing Services	$88.00	$104.00	$120.00		Oct 1, 2017.
Laboratory Approval Services [3]	185.00	211.00	234.00	X	Jan 1, 2018.
Tobacco Fees					
7 CFR Part 29—Tobacco Inspection Subpart A—Policy Statement and Regulations Governing the Extension of Tobacco Inspection and Price Support Services to New Markets and to Additional Sales on Designated Markets Subpart B—Regulations; §§ 29.123–29.129 Fees and Charges; § 29.500 Fees and charges for inspection and acceptance of imported tobacco Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Non-quota Tobacco Produced and Marketed in Quota Area; § 29.9251 Fees and Charges					
Domestic Permissive Inspection and Certification (re-grading of domestic tobacco for processing plants, retesting of imported tobacco, and grading tobacco for research stations.).	$55.00	$64.00	$72.00		July 1, 2017.
Export Permissive Inspection and Certification (grading of domestic tobacco for manufacturers and dealers for duty drawback consideration).	$0.0025/pound			X	July 1, 2017.
Grading for Risk Management Agency (for Tobacco Crop Insurance Quality Adjustment determinations).	$0.015/pound			X	July 1, 2017.
Pesticide Test Sampling (collection of certified tobacco sample and shipment to AMS National Science Laboratory for testing).	$0.0065/kg or $0.0029/pound			X	July 1, 2017.

2017 RATES—Continued

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
Pesticide Retest Sampling (collection of certified tobacco sample from a previously sampled lot for re-testing at the AMS National Science Laboratory; fee includes shipping).	$115.00/sample and $55.00/hour			X	July 1, 2017.
Standards Course (training by USDA-certified instructor on tobacco grading procedures).	$1,250.00/person			.....	July 1, 2017.
Import Inspection and Certification (grading of imported tobacco for manufacturers and dealers).	$0.0170/kg or $0.0080/pound			X	July 1, 2017.

[1] Administrative charges are applied in addition to hourly rates for resident service as specified in Part 56, Subpart A, § 56.52(a)(4); Part 56, Subpart A, § 56.54(a)(2); Part 70, Subpart A, § 70.76(a)(2); Part 70, Subpart A, § 70.77(a)(4) and Part 70, Subpart A, § 70.77(a)(5).
[3] Travel costs outside the United States will be added to the fee, if applicable.

Authority: 7 U.S.C. 15b; 7 U.S.C. 473a–b; 7 U.S.C. 55 and 61; 7 U.S.C. 51–65; 7 U.S.C. 471–476; 7 U.S.C. 511, 511s; and 7 U.S.C. 1621–1627.

Dated: May 4, 2017.

Bruce Summers,

Acting Administrator.

[FR Doc. 2017–09350 Filed 5–8–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 4, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 8, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Child Nutrition Program Operations Study II (CN–OPS II).

OMB Control Number: 0584–0607.

Summary of Collection: The objective of the Child Nutrition Program Operations Study II (CN–OPS–II) is to collect timely data on policies, administrative, and operational issues on the Child Nutrition Programs (CNP). The study will help FNS obtain general descriptive data on the child nutrition programs' characteristics needed to respond to questions concerning those programs; obtain data related to program administration for designing and revising program regulations, managing resources, and reporting requirements; and obtain data related to program operations to help FNS develop and provide training and technical assistance to the School Food Authorities and State Agencies responsible for administering these programs.

Need and Use of the Information: This study will survey School Food Authority and State Child Nutrition directors. FNS will use the data to understand how recent and proposed legislation, regulations, policies, and initiatives change the operations in the child nutrition programs and to describe trends in the programs' participation and operational practices, as well as aspects of particular operations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 3,379.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,099.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–09396 Filed 5–8–17; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 4, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 8, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and

Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

National Agriculture Statistics Service

Title: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Summary of Collection: National Agriculture Statistics Service (NASS) primary functions are to prepare and issue state and national estimates of crop and livestock production and collect information on related environmental and economic factors. The Agricultural Surveys Program is a series of surveys that contains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts. The surveys results provide the foundation for setting livestock and poultry inventory numbers. Estimates derived from the surveys supply information needed by farmers to make decisions for both short and long-term planning. The General authority for these data collection is granted under U.S. Code Title 7, Section 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, as amended, 7 U.S.C, 2276, which requires USDA to afford strict confidentially to non-aggregated data provided by respondents.

Need and Use of the Information: The surveys provide the basis for estimates of the current season's crop and livestock production and supplies of grain in storage. Crop and livestock statistics help develop a stable economic atmosphere and reduce risk for production, marketing, and distribution operations. These commodities affect the well being of the nation's farmers, commodities markets, and national and global agricultural policy. Users of agricultural statistics are farm organizations, agribusiness, state and national farm policy makers, and foreign buyers of agricultural products but the primary user of the statistical information is the producer. Agricultural statistics are also used to plan and administer other related federal and state programs in such areas as school lunch program, conservation, foreign trade, education, and recreation. Collecting the information less frequent would eliminate needed data to keep the government and agricultural industry abreast of changes at the state and national levels.

Description of Respondents: Farms.

Number of Respondents: 512,500.

Frequency of Responses: Reporting: Quarterly; Semi-annually; Monthly; Annually.

Total Burden Hours: 168,342.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–09389 Filed 5–8–17; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 4, 2017.

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: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; 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, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by June 8, 2017. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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: Pistachios Grown in California, Arizona and New Mexico.

OMB Control Number: 0581–0215.

Summary of Collection: The Pistachio Marketing Order, (7 CFR part 983), covering pistachios grown in California, Arizona and New Mexico is established and regulated under the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended, (7 U.S.C. 601–674), herein referred to as the Act. The order regulates the handling of pistachios, authorizes grade and size requirements, as well as a requirement for aflatoxin testing on domestic shipments only. The Secretary is authorized to oversee the order operations and issue regulations recommended by representatives from the Pistachio Committee.

Need and Use of the Information: The Agricultural Marketing Service has developed forms as a convenience for handlers and producers who are required to file certain information with the Committee relating to pistachio supplies, shipments, dispositions, and other information needed to effectively implement the requirements of the order and carry out the purposes of the Act. Collecting data less frequently would eliminate the Secretary's ability to administer the order.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 1,070.

Frequency of Responses: Reporting: On occasion; Weekly; Monthly; Quarterly; Annually.

Total Burden Hours: 470.

Agricultural Marketing Service

Title: Christmas Tree Promotion, Research, and Information Order.

OMB Control Number: 0581–0268.

Action: Renewal and Extension of a Previously Approved Collection.

Summary of Collection: A Christmas Tree Promotion, Research and Information Order created under the Commodity Promotion, Research, and Information Act of 1996 (Pub. L. 104–127, 110 Stat. 1032, April 4, 1996, 7 U.S.C. 744–7425) requires collection of information to carry out the program. The program includes projects relating to research, information, advertising, sales promotion, market development and production research to assist, improve, or promote the marketing, distribution, competitive position and stimulate sales of Christmas trees.

Need and Use of the Information: The Christmas tree program will be administered by the Christmas Tree Promotion Board appointed by the Secretary of Agriculture and financed by a mandatory assessment on producers and importers of fresh cut Christmas trees. The program will provide for an exemption for producers and importers that cut and sell or import fewer than 500 Christmas trees annually. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the program, and their use is essential to carry out the intent of the Order.

Description of Respondents: Producers and Importers.

Number of Respondents: 12,455.

Frequency of Responses: Reporting: Annually; Recordkeeping.

Total Burden Hours: 10,700.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–09313 Filed 5–8–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0035]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Fresh Baby Kiwi From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of fresh baby kiwi from Chile into the continental United States.

DATES: We will consider all comments that we receive on or before July 10, 2017.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0035.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0035, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0035* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of fresh baby kiwi from Chile, contact Dr. Robert Baca, Assistant Director, Permitting and Compliance Coordination, Compliance and Environmental Coordination Branch, PPQ, APHIS, 4700 River Road, Unit 150, Riverdale, MD 20737; (301) 851–2292. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fresh Baby Kiwi From Chile.

OMB Control Number: 0579–0374.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service regulates the importation of certain fruits and vegetables in accordance with the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–76).

Under these regulations, fresh baby kiwi from Chile may be imported into the continental United States under certain conditions, as listed in 7 CFR 319.56–53, to prevent the introduction of plant pests into the United States. The regulations require information collection activities, including an operational workplan, low prevalence production site certification, production site registration, phytosanitary inspections, labeling of containers, identification of fruit in shipping documentation to specify production sites and packing sheds where fruit was processed, and a phytosanitary certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.02 hours per response.

Respondents: Growers and shippers of fresh baby kiwi from Chile and the national plant protection organization of Chile.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 8,243.6.

Estimated annual number of responses: 41,218.

Estimated total annual burden on respondents: 849 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of May 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–09352 Filed 5–8–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0036]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Tomatoes With Stems From the Republic of Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of tomatoes with stems from the Republic of Korea.

DATES: We will consider all comments that we receive on or before July 10, 2017.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0036.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0036* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of tomatoes with stems from the Republic of Korea, contact Dr. Robert Baca, Assistant Director, Permitting and Compliance Coordination, Compliance and Environmental Coordination Branch, PPQ, APHIS, 4700 River Road, Unit 150, Riverdale, MD 20737; (301) 851–2292. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Importation of Tomatoes With Stems From the Republic of Korea.

OMB Control Number: 0579–0371.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service regulates the importation of certain fruits and vegetables in accordance with the regulations contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–76).

Under the regulations, tomatoes with stems from the Republic of Korea may be imported into the United States under certain conditions, as listed in 7 CFR 319.56–52, to prevent the introduction of plant pests into the United States. These regulations require information collection activities including inspection, registered pest-exclusionary structures, recordkeeping, trapping, and a phytosanitary certificate with an additional declaration stating that the tomatoes were produced in accordance with the regulations.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.589 hours per response.

Respondents: Growers, importers, and exporters of tomatoes with stems from the Republic of Korea; and the national plant protection organization of the Republic of Korea.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 31.7.

Estimated annual number of responses: 95.

Estimated total annual burden on respondents: 56 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of May 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–09353 Filed 5–8–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Notice of Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Aluminum

AGENCY: Bureau of Industry and Security, Office of Technology Evaluation, U.S. Department of Commerce.

ACTION: Notice of request for public comments and public hearing.

SUMMARY: The Secretary of Commerce initiated an investigation to determine the effects on the national security of imports of aluminum. This investigation has been initiated under section 232 of the Trade Expansion Act of 1962, as amended.

Interested parties are invited to submit written comments, data,

analyses, or other information pertinent to the investigation to the Department of Commerce's Bureau of Industry and Security.

The Department of Commerce will also hold a public hearing on the investigation on June 22, 2017, in Washington, DC.

This notice identifies the issues on which the Department is interested in obtaining the public's views. It also sets forth the procedures for public participation in the hearing.

DATES: Comments may be submitted at any time but must be received by June 29, 2017. The hearing will be held on June 22, 2017, at the U.S. Department of Commerce auditorium, 1401 Constitution Avenue NW., Washington, DC 20230. The hearing will begin at 10:00 a.m. local time and conclude at 1:00 p.m. local time.

ADDRESSES: *Written comments:* Send written comments to Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 1093, Washington, DC 20230 or by email to *Aluminum232@bis.doc.gov.*

Public hearing: Send requests to speak and written summaries of the oral presentations to Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 1093, Washington, DC 20230 or by email to *Aluminum232@bis.doc.gov,* by June 15, 2017. Any person, whether presenting or not, may submit a written statement through June 29, 2017—seven days after the hearing date.

FOR FURTHER INFORMATION CONTACT: Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–4060, *brad.botwin@bis.doc.gov.* For more information about the section 232 program, including the regulations and the text of previous investigations, see *www.bis.doc.gov/232.*

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2017, the Secretary of Commerce initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of aluminum. On April 27, 2017, the President signed a memorandum directing the Secretary of Commerce (''Secretary'') to proceed expeditiously in conducting his investigation and submit a report on his findings to the President. The President further directed that if the Secretary finds that aluminum is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall recommend actions and steps that should be taken to adjust aluminum imports so that they will not threaten to impair the national security.

Written Comments

This investigation is being undertaken in accordance with part 705 of the National Security Industrial Base Regulations (15 CFR parts 700 to 709) (''NSIBR''). Interested parties are invited to submit written comments, data, analyses, or information pertinent to this investigation to the Office of Technology Evaluation, U.S. Department of Commerce (''the Department''), no later than June 29, 2017.

The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the regulations as they affect national security, including the following: (a) Quantity of or other circumstances related to the importation of aluminum; (b) Domestic production and productive capacity needed for aluminum to meet projected national defense requirements; (c) Existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce aluminum; (d) Growth requirements of the aluminum industry to meet national defense requirements and/or requirements to assure such growth; (e) The impact of foreign competition on the economic welfare of the aluminum industry; (f) The displacement of any domestic aluminum causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; (g) Relevant factors that are causing or will cause a weakening of our national economy; and (h) Any other relevant factors.

Material that is business confidential information will be exempted from public disclosure as provided for by § 705.6 of the regulations. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission, then file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential submission which can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection. Please note that the submission of comments for presentation at the public hearing is separate from the request for written comments.

The Bureau of Industry and Security does not maintain a separate public inspection facility. Requesters should first view the Bureau's Web page, which can be found at *https://efoia.bis.doc.gov/* (see ''Electronic FOIA'' heading). If requesters cannot access the Web site, they may call (202) 482–0795 for assistance. The records related to this assessment are made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Public Hearing

Consistent with the interest of the U.S. Department of Commerce in soliciting public comments on issues affecting U.S. industry and national security, the Department is holding a public hearing as part of the investigation. The hearing will assist the Department in determining whether imports of aluminum threaten to impair the national security and in recommending remedies if such a threat is found to exist. Public comments at the hearing should address the criteria listed in § 705.4 of the NSIBR as they affect national security described above. The hearing will be held on June 22, 2017, at the U.S. Department of Commerce auditorium, 1401 Constitution Avenue NW., Washington, DC 20230. The hearing will begin at 10:00 a.m. local time and conclude at 1:00 p.m. local time.

Procedure for Requesting Participation

The Department encourages interested public participants to present their views orally at the hearing. Any person wishing to make an oral presentation at the hearing must submit a written request to the Department of Commerce at the address indicated in the **ADDRESSES** section of this notice. The request to participate in the hearing must be accompanied by a copy of a summary of the oral presentation. The written request and summary must be received by the Department no later than Thursday, June 15, 2017. In addition, the request to speak should contain (1) the name and address of the person requesting to make a presentation; (2) a daytime phone number where the person who would be making the oral presentation may be contacted before the hearing; (3) the organization or company they represent; and (4) an email address.

Please note that the submission of comments for presentation at the public hearing is separate from the request for written comments. Since it may be necessary to limit the number of persons making presentations, the written request to participate in the public hearing should describe the individual's interest in the hearing and, where appropriate, explain why the individual is a proper representative of a group or class of persons that has such an interest. If all interested parties cannot be accommodated at the hearing, the summaries of the oral presentations will be used to allocate speaking time and to ensure that a full range of comments is heard.

Each person selected to make a presentation will be notified by the Department of Commerce no later than 8:00 p.m. Eastern Daylight Time on Friday, June 16, 2017. The Department will arrange the presentation times for the speakers. Persons selected to be heard are requested to bring 20 copies of their oral presentation and of all exhibits to the hearing site on the day of the hearing. All such material must be of a size consistent with ease of handling, transportation, and filing. While large exhibits may be used during a hearing, copies of such exhibits in reduced size must be provided to the panel. Written submissions by persons not selected to make presentations will be made part of the public record of the proceeding. Any person, whether presenting or not, may submit a written statement through June 29, 2017—seven days after the hearing date. Confidential business information may not be submitted at a public hearing. In the event confidential business information is submitted, it will be handled according to the same procedures applicable to such information provided in the course of an investigation. See 15 CFR 705.6. The hearing will be recorded.

Copies of the requests to participate in the public hearing and the transcript of the hearing will be maintained on the Bureau of Industry and Security's Web page, which can be found at *http://www.bis.doc.gov* (see Freedom of Information Act (FOIA) link at the bottom of the page). If the requesters cannot access the Web site, they may call (202) 482–0795 for assistance. The records related to this assessment are made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Conduct of the Hearing

The Department reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each speaker will be limited to 10 minutes, and comments must be directly related to the criteria listed in 15 CFR 705.4 of the regulations. Attendees will be seated on a first-come, first-served basis.

A Department official will be designated to preside at the hearing. The presiding officer shall determine all procedural matters during the hearing. Representatives from the Department, and other U.S. Government agencies as appropriate, will make up the hearing panel. This will be a fact-finding proceeding; it will not be a judicial or evidentiary-type hearing. Only members of the hearing panel may ask questions, and there will be no cross-examination of persons presenting statements. However, questions submitted to the presiding officer in writing may, at the discretion of the presiding officer, be posed to the presenter. No formal rules of evidence will apply to the hearing.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be received by the Department of Commerce no later than Monday, June 12, 2017, at the address indicated in the **ADDRESSES** section of this notice.

Dated: May 3, 2017.

Wilbur Ross,

Secretary of Commerce.

[FR Doc. 2017–09328 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–823]

Welded Line Pipe From Turkey: Rescission, in Part, of Countervailing Duty Administrative Review; 2015

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

SUMMARY: On February 13, 2017, the Department of Commerce (Department) initiated an administrative review of the countervailing duty order on welded line pipe from the Republic of Turkey (Turkey) for nineteen companies. Based on timely withdrawal of requests for review, we are now rescinding this administrative review with respect to 17 of these companies.

DATES: Effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Whitley Herndon, 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) 482–4987 or (202) 482–6274, respectively.

Background

In December 2016 and January 2017, the Department received multiple timely requests to conduct an administrative review of the antidumping duty order on welded line pipe from Turkey. Based upon these requests, on February 13, 2017, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published a notice of initiation of an administrative review with respect to nineteen companies for the period March 20, 2015, through December 31, 2015.[1]

On March 2, 2017, Maverick Tube Corporation (Maverick), Stupp Corporation, a division of Stupp Bros., Inc. (Stupp Corp.) and American Cast Iron Pipe Company (ACIPCO) timely withdrew their requests for a review of all the companies with the exception of two companies, Borusan Istikbal Ticaret and Borusan Mannesmann Boru Sanayi ve Ticaret A.S.[2]

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. All the aforementioned withdrawal requests were timely submitted, and no other interested party requested an administrative review of these particular companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the countervailing duty order on welded line pipe from Turkey, in part, with respect to the seventeen companies named in the appendix.

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 10457, 10465 (February 13, 2017).

[2] *See* Letter from Maverick to the Department, ''Welded Line Pipe from the Republic of Turkey: Withdrawal of Request for Administrative Review,'' dated March 2, 2017. *See also* Letter from Stupp Corp. and ACIPCO to the Department, ''Welded Line Pipe from the Republic of Turkey: Withdrawal of Request for Administrative Review,'' dated March 2, 2017.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For the seventeen companies named in Appendix I for which these reviews are rescinded, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Orders

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

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

Dated: May 3, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Companies for Which the Administrative Review Is Rescinded

Cayirova Boru Sanayii ve Ticaret A.S.
Cimtas Boru Imalatlari ve Ticaret, Ltd. Sti.
Emek Boru Makina Sanayi ve Ticaret A.S.
Erbosan Erciyas Tube Industry and Trade Co. Inc.
Erciyas Celik Boru Sanayii A.S.
Guven Celik Boru Sanayii ve Ticaret Ltd. Sti.
Has Altinyagmur celik Boru Sanayii ve Ticaret Ltd. Sti.
HDM Steel Pipe Industry & Trade Co. Ltd.
Metalteks Celik Urunleri Sanayii
MMZ Onur Boru Profil Uretim Sanayii ve Ticaret A.S.
Noksel Steel Pipe Co. Inc.
Ozbal Celik Boru
Toscelik Profile and Sheet Industry, Co.
Tosyali Dis Ticaret A.S.
Umran Celik Boru Sanayii
YMS Pipe & Metal Sanayii A.S.
Yucelboru Ihracat Ithalat Pazzarlam

[FR Doc. 2017–09356 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–803]

Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this sunset review, the Department of Commerce (the Department) finds that revocation of the antidumping duty (AD) order on light-walled welded rectangular carbon steel tubing from Taiwan (steel tubing) would likely lead to a continuation or recurrence of dumping. Further, the magnitude of the margin of dumping that are likely to prevail is identified in the ''Final Results of Review'' section of this notice.

DATES: Effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1757 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1989, the Department published the AD order on steel tubing from Taiwan.[1] On January 3, 2017, the Department published the notice of initiation of the fourth sunset review of the AD order on steel tubing,[2] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

On January 10, 2017, the Department received a notice of intent to participate on behalf of Atlas Tube, Bull Moose Tube, and Searing Industries (collectively, the domestic interested parties) within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as manufacturers in the United States of a domestic like product.

On February 2, 2017, the Department received a complete substantive response to the *Initiation* from the domestic interested parties within the 30-day period, specified in 19 CFR 351.218(d)(3)(i).[3] We received no substantive responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the AD order on steel tubing from Taiwan.

Scope of the Order

The product covered by the order is light-walled welded carbon steel pipe and tube of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch. This merchandise is classified under item number 7306.61.5000 of the Harmonized Tariff Schedule (HTS). It was formerly classified under item number 7306.60.5000. The HTS item numbers are provided for convenience and customs purposes only. The written product description remains dispositive.

Analysis of Comments Received

All issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping and the magnitude of the margin of dumping likely to prevail if the order is revoked, are addressed in the Issues and Decision Memorandum.[4] 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://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn.*

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[1] *Antidumping Duty Order; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan,* 54 FR 12467 (March 27, 1989).

[2] *See Initiation of Five-Year (''Sunset'') Reviews,* 82 FR 84 (January 3, 2017) (*Initiation*).

[3] *See* Letter from domestic interested parties regarding ''Light-Walled Rectangular Welded Carbon Steel Pipe and Tube from Taiwan, Fourth Sunset Review: Substantive Response to Notice of Initiation,'' dated February 2, 2017.

[4] *See* Memorandum from Associate Deputy Assistant Secretary Gary Taverman to Acting Assistant Secretary Ronald K. Lorentzen entitled, ''Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order on Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan,'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the AD order on steel tubing from Taiwan would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margin of dumping likely to prevail if the AD order is revoked would be up to 40.97 percent.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of propriety information disclosed under APO in accordance with 19 CFR 351.305. 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 violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: May 3, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary For Enforcement and Compliance.

[FR Doc. 2017–09355 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: Effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''the Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (''Q&V'') Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than March 31, 2018.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Certain Uncoated Paper A–351–842	8/27/15–2/28/17
Suzano Papel e Celulose S.A.	
Indonesia: Certain Uncoated Paper A–560–828	8/26/15–2/28/17
PT Anugerah Kertas Utama, PT Riau Andalan Kertas, and APRIL Fine Paper Macao Offshore Limited (collectively APRIL).	
PT. Indah Kiat Pulp and Paper Tbk and PT. Pabrik Kertas Tjiwi Kimia Tbk (collectively APP).	
Mexico: Large Residential Washers [4] A–201–842	2/1/16–1/31/17
Electrolux Home Products Corp. NV.[5]	
Portugal: Certain Uncoated Paper A–471–807	8/26/15–2/28/17
Portucel S.A./The Navigator Company, S.A.[6]	
Republic of Korea: Large Residential Washers [7] A–580–868	2/1/16–1/31/17
Spain: Stainless Steel Bar A–469–805	3/1/16–2/28/17
Sidenor Aceros Especiales S.L. ./Gerdau Aceros Especiales Europa S.L.[8]	

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

[4] We inadvertently included Electrolux Home Products, Inc. (misspelled as Electrolux Hone Products, Inc.) in the initiation notice that published on April 10, 2017 (82 FR 17188).

[5] The company listed about was misspelled in the initiation notice that published on April 10, 2017 (82 FR 17188). The correct spelling of the company name is listed in this notice.

[6] On November 23, 2016, the Department determined that The Navigator Company, S.A., is the successor-in-interest to Portucel S.A. *See Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 84555 (November 23, 2016).

[7] We inadvertently included LG Electronics USA, Inc. in the initiation notice that published on April 10, 2017 (82 FR 17188).

	Period to be reviewed
Thailand: Circular Welded Carbon Steel Pipes and Tubes A–549–502	3/1/16–2/28/17
Pacific Pipe Public Company Limited.	
Saha Thai Steel Pipe (Public) Company, Ltd.	
Thai Premium Pipe Co., Ltd.	
The People's Republic of China: Certain Tissue Paper Products A–570–894	3/1/16–2/28/17
Chung Rhy Special Paper Mill Co., Ltd.	
Global Key, Inc.	
The People's Republic of China: Glycine A–570–836	3/1/16–2/28/17
Avid Organics Pvt. Ltd.	
Kumar Industries.	
Rudraa International.	
The People's Republic of China: Small Diameter Graphite Electrodes [9] A–570–929	2/1/16–1/31/17
Fangda Group (The Fangda Group consists of Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd).	
Countervailing Duty Proceedings	
Indonesia: Certain Uncoated Paper C–560–829	6/29/15–12/31/16
PT Anugerah Kertas Utama, PT Riau Andalan Kertas, and APRIL.	
Fine Paper Macao Offshore Limited (collectively APRIL).	
PT. Indah Kiat Pulp and Paper Tbk and PT. Pabrik Kertas Tjiwi Kimia Tbk (collectively APP).	
Republic of Korea: Cut-To-Length Carbon-Quality Steel Plate [10] C–580–837	1/1/16–12/31/16
Turkey: Circular Welded Carbon Steel Pipes and Tubes C–489–502	1/1/16–12/31/16
Borusan Istikbal Ticaret T.A.S.	
Borusan Mannesnamm Boru Sanayi ve Ticaret A.S.	
Suspension Agreements	
None.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

[8] On December 2, 2016, the Department determined that Sidenor Aceros Especiales S.L. is the successor-in-interest to Gerdau Aceros Especiales Europa S.L. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Stainless Steel Bar from Spain,* 81 FR 87021 (December 2, 2016).

[9] The company listed about was misspelled in the initiation notice that published on April 10, 2017 (82 FR 17188). The correct spelling of the company name is listed in this notice.

[10] In the initiation notice that published on April 10, 2017 (82 FR 17188) the POR for the above referenced case was incorrect. The period listed above is the correct POR for this case.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in the Department's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

The Department's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[11] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at

[11] *See* section 782(b) of the Act.

the end of the *Final Rule*.[12] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. *See* 19 CFR 351.302. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

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

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: May 2, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–09301 Filed 5–8–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–057]

Certain Tool Chests and Cabinets From the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: *Effective Date:* May 1, 2016.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten at (202) 482–1690, AD/CVD Operations, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On April 11, 2017, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of certain tool chests and cabinets (tool chests) from the People's Republic of China (PRC), filed in proper form, on behalf of Waterloo Industries Inc. (the petitioner).[1] The petitioner is a domestic producer of tool chests.[2] The CVD petition was accompanied by antidumping duty (AD) petitions concerning imports of tool chests from the PRC and the Socialist Republic of Vietnam (Vietnam).

On April 13 2017, the petitioner filed an amendment to the Petition.[3] On April 13 and 20, 2017, the Department requested additional information and clarification of certain areas of the Petition.[4] The petitioner filed responses to these requests on April 18 and 21, 2017.[5] On April 27, 3017, the petitioner filed an additional amendment to the Petition.[6]

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

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioner is requesting.[7]

Period of Investigation

Because the Petition was filed on April 11, 2017, pursuant to 19 CFR

[1] *See* Letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam—Petition for the Imposition of Antidumping and Countervailing Duties'' (April 11, 2017) (the Petition).

[2] *See* Volume I of the Petitions, at 1.

[3] *See* Letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets From the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's Amendment to Volume I of the Antidumping and Countervailing Duty Petition'' (April 13, 2017) (clarifying the scope of the imported merchandise that the petitioner intends to cover).

[4] *See* letter to the petitioner from the Department concerning supplemental questions on Volume IV of the Petition (April 13, 2017); *see also* letter to the petitioner from the Department concerning supplemental questions on general issues (April 13, 2017) (General Issues Supplemental Questionnaire); and letter to the petitioner from the Department concerning supplemental questions on Volume IV (April 20, 2017).

[5] *See* Letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's Response to Supplemental Questionnaire Concerning Volume IV'' (April 18, 2017); *see also* letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets From the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's 2nd Amendment to Volume I of the Antidumping and Countervailing Duty Petition'' (April 18, 2017) (General Issues 2nd Amendment); and letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's Response to Supplemental Questionnaire Concerning Volume IV'' (April 21, 2017).

[6] *See* Letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets From the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's 3rd Amendment to Volume I of the Antidumping and Countervailing Duty Petition'' (April 27, 2017) (General Issues 3rd Amendment).

[7] *See* ''Determination of Industry Support for the Petition'' section, below.

351.204(b)(2), the period of investigation is January 1, 2016, through December 31, 2016.[8]

Scope of the Investigation

The products covered by this investigation are tool chests from the PRC. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[9]

As discussed in the preamble to the Department's regulations,[10] we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope). The Department will consider all comments received from interested parties and, if necessary, will consult with the interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[11] all such factual information should be limited to public information. In order to facilitate preparation of its questionnaire, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, May 22, 2017, which is the next business day after 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, June 1, 2017, which is 10 calendar days from the deadline for initial comments.[12] All such comments must be filed on the records of each of the concurrent AD investigations.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. As stated above, all such comments must be filed on the record of the concurrent AD investigations.

Filing Requirements

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

Consultations

Pursuant to section 702(b)(4)(A) of the Act, the Department notified representatives of the GOC of the receipt of the Petition, and provided them the opportunity for consultations with respect to the CVD Petition.[14] In response to the Department's letter, the GOC requested that consultations be held.[15] Such consultations were held on April 26, 2017.[16] The invitation letter and memorandum regarding the consultations are on file electronically *via* ACCESS.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[17] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[18]

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

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the

[8] *See* 19 CFR 351.204(b)(2).

[9] *See* General Issues Supplemental Questionnaire; *see also* General Issues 2nd Amendment; and General Issues 3rd Amendment.

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

[11] *See* 19 CFR 351.102(b)(21).

[12] *See* 19 CFR 351.303(b).

[13] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[14] *See* Letter to the embassy of the PRC from the Department ''Countervailing Duty Petition on Certain Tool Chests and Cabinets from the People's Republic of China'' (April 11, 2017).

[15] *See* Letter to the Department from the Ministry of Commerce of the People's Republic of China ''Consultation Request for Countervailing Duty Petition on Certain Tool Chest and Cabinets'' (April 18, 2017).

[16] *See* Department Memorandum ''Countervailing Duty Petition on Certain Tool Chests and Cabinets from the People's Republic of China: GOC Consultations'' (April 26, 2017).

[17] *See* section 771(10) of the Act.

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

record, we have determined that tool chests, as defined in the scope, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2016.[20] In addition, the petitioner provided a letter of support from Metal Box International, stating that the company supports the Petition and providing its own production of the domestic like product in 2016.[21] The petitioner identifies itself and Metal Box International as the companies constituting the U.S. tool chests industry and states that there are no other known producers of tool chests in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[22]

Our review of the data provided in the Petition and other information readily available to the Department indicates that the petitioner has established industry support for the Petition.[23] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[24] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[25] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[26] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that the Department initiate.[27]

Injury Test

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

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[28]

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; declining production and shipments; declining net sales; and deteriorating financial performance.[29] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[30]

Initiation of CVD Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

The petitioner alleges that producers/exporters of tool chests in the PRC benefited from countervailable subsidies bestowed by the GOC. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, and/or exporters of tool chests from the PRC receive countervailable subsidies from the GOC.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.[31] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[32] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[33]

Subsidy Allegations

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 17 of the 18 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the PRC

[19] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Tool Chests and Cabinets from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam, (Attachment II). This checklist is dated concurrently with this notice and on file electronically *via* ACCESS.

[20] *See* Volume I of the Petition, at 3 and Exhibit GEN–1.

[21] *Id.,* at 3 and Exhibit GEN–2.

[22] *Id.,* at 2–3 and Exhibits GEN–1 and GEN–2.

[23] *See* PRC CVD Initiation Checklist, at Attachment II.

[24] *See* section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

[25] *See* PRC CVD Initiation Checklist, at Attachment II.

[26] *Id.*

[27] *Id.*

[28] *See* Volume I of the Petition, at 17–19 and Exhibits GEN–2, GEN–7, and GEN–11.

[29] *See* Volume I of the Petition, at 12–26 and Exhibits GEN–2, GEN–6 through GEN–9, and GEN–11 through GEN–15.

[30] *See* PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam.

[31] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[32] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[33] *Id.,* at 46794–95.

CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on *ACCESS.*

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

Respondent Selection

The Department normally selects respondents in a CVD investigation using U.S. Customs and Border Protection (CBP) entry data. However, for this investigation, the Harmonized Tariff Schedule of the United States (HTSUS) numbers the subject merchandise would enter under are basket categories containing many products unrelated to tool chests, and the HTSUS numbers allow for the reporting of differing units of quantity. Therefore, we cannot rely on CBP entry data in selecting respondents. Instead, for this investigation, the Department will request quantity and value (Q&V) information from known exporters and producers identified, with complete contact information, in the Petition. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement & Compliance Web site at *http://www.trade.gov/enforcement/news.asp*.

Producers/exporters of tool chests from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance Web site. The Q&V response must be submitted by the relevant PRC exporters/producers no later than May 11, 2017. All Q&V responses must be filed electronically *via* ACCESS.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC *via* ACCESS. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by delivery of the public version to the government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of tool chests from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[34] A negative ITC determination will result in the investigation being terminated;[35] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

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

Extension of Time Limits Regulation

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

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

Notification to Interested Parties

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

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

[34] *See* section 703(a)(2) of the Act.

[35] *See* section 703(a)(1) of the Act.

[36] *See* section 782(b) of the Act.

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

Dated: May 1, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers certain metal tool chests and tool cabinets, with drawers, (tool chests and cabinets), from the People's Republic of China (the PRC). The scope covers all metal tool chests and cabinets, including top chests, intermediate chests, tool cabinets and side cabinets, storage units, mobile work benches, and work stations and that have the following physical characteristics:

(1) A body made of carbon, alloy, or stainless steel and/or other metals;

(2) two or more drawers for storage in each individual unit;

(3) a width (side to side) exceeding 15 inches for side cabinets and exceeding 21 inches for all other individual units but not exceeding 60 inches;

(4) a drawer depth (front to back) exceeding 10 inches but not exceeding 24 inches; and

(5) prepackaged for retail sale.

For purposes of this scope, the width parameter applies to each individual unit, *i.e.,* each individual top chest, intermediate top chest, tool cabinet, side cabinet, storage unit, mobile work bench, and work station.

Prepackaged for retail sale means the units are packaged in a cardboard box or other container suitable for retail display and sale. Subject tool chests and cabinets are covered whether imported in assembled or unassembled form. Subject merchandise includes tool chests and cabinets produced in the PRC but assembled, prepackaged for sale, or subject to other minor processing in a third country prior to importation into the United States. Similarly, it would include tool chests and cabinets produced in the PRC that are later found to be assembled, prepackaged for sale, or subject to other minor processing after importation into the United States.

Subject tool chests and cabinets may also have doors and shelves in addition to drawers, may have handles (typically mounted on the sides), and may have a work surface on the top. Subject tool chests and cabinets may be uncoated (*e.g.,* stainless steel), painted, powder coated, galvanized, or otherwise coated for corrosion protection or aesthetic appearance.

Subject tool chests and cabinets may be packaged as individual units or in sets. When packaged in sets, they typically include a cabinet with one or more chests that stack on top of the cabinet. Tool cabinets act as a base tool storage unit and typically have rollers, casters, or wheels to permit them to be moved more easily when loaded with tools. Work stations and work benches are tool cabinets with a work surface on the top that may be made of rubber, plastic, metal, wood, or other materials.

Top chests are designed to be used with a tool cabinet to form a tool storage unit. The top chests may be mounted on top of the base tool cabinet or onto an intermediate chest. They are often packaged as a set with tool cabinets or intermediate chests, but may also be packaged separately. They may be packaged with mounting hardware (*e.g.,* bolts) and instructions for assembling them onto the base tool cabinet or onto an intermediate tool chest which rests on the base tool cabinet. Smaller top chests typically have handles on the sides, while the larger top chests typically lack handles. Intermediate tool chests are designed to fit on top of the floor standing tool cabinet and to be used underneath the top tool chest. Although they may be packaged or used separately from the tool cabinet, intermediate chests are designed to be used in conjunction with tool cabinets. The intermediate chests typically do not have handles. The intermediate and top chests may have the capability of being bolted together.

Side cabinets are designed to be bolted or otherwise attached to the side of the base storage cabinet to expand the storage capacity of the base tool cabinet.

Subject tool chests and cabinets also may be packaged with a tool set included. Packaging a subject tool chest and cabinet with a tool set does not remove an otherwise covered subject tool chest and cabinet from the scope. When this occurs the tools are not part of the subject merchandise.

Excluded from the scope of the investigation are tool boxes, chests and cabinets with bodies made of plastic, carbon fiber, wood, or other non-metallic substances. Also excluded from the scope of the investigation are portable metal tool boxes. Portable metal tool boxes have each of the following characteristics: (1) Fewer than three drawers; (2) a handle on the top that allows the tool box to be carried by hand; and (3) a width that is 21 inches or less; and depth (front to back) not exceeding 10 inches.

Also excluded from the scope of the investigation are industrial grade steel tool chests and cabinets. The excluded industrial grade steel tool chests and cabinets are those:

(1) Having a body that is over 60 inches wide; or

(2) having each of the following physical characteristics:

(a) A body made of steel that is 0.055″ or more in thickness;

(b) all drawers over 21″ deep;

(c) all drawer slides rated for 200 lbs. or more; and

(d) not prepackaged for retail sale.

Also excluded from the scope of the investigation are work benches with fewer than two drawers. Excluded work benches have a solid top working surface, fewer than two drawers, are supported by legs and have no solid front, side, or back panels enclosing the body of the unit.

Also excluded from the scope of the investigation are metal filing cabinets that are configured to hold hanging file folders and are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 9403.10.0020.

Merchandise subject to the investigation is classified under HTSUS categories 9403.20.0021, 9403.20.0026, 9403.20.0030 and 7326.90.8688, but may also be classified under HTSUS category 7326.90.3500. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2017–09371 Filed 5–8–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815, A–533–806, C–533–807]

Sulfanilic Acid From India and the People's Republic of China: Continuation of Antidumping Duty and Countervailing Duty Orders

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

SUMMARY: As a result of determinations by the Department of Commerce (Department) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on sulfanilic acid from the People's Republic of China (PRC) and India and the countervailing duty (CVD) order on sulfanilic acid from India would likely lead to continuation or recurrence of dumping and a countervailable subsidy and material injury to an industry in the United States, the Department is publishing this notice of continuation of these AD and CVD orders.

DATES: Effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: Mandy Mallott (India and PRC AD Orders), John Conniff (India CVD Order), AD/CVD Operations, Office III, Enforcement and Compliance International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6430 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION: On September 1, 2016, the Department initiated the fourth sunset reviews of the AD orders on sulfanilic acid from the PRC and India and the CVD order on sulfanilic acid from India pursuant to section 751(c) of the Tariff Act of 1930, as amended (Act).[1]

As a result of its reviews, pursuant to sections 751(c) and 752(b) of the Act, the Department determined that revocation of the AD orders on sulfanilic acid from India and the PRC and the CVD order on sulfanilic acid from India would be likely to lead to a continuation or recurrence of dumping and a countervailable subsidy, and, therefore, notified the ITC of the magnitude of the margins and net

[1] *See Initiation of Five-Year ("Sunset") Reviews,* 81 FR 60386 (September 1, 2016) ("*Notice of Initiation*").

countervailable subsidy likely to prevail should the orders be revoked.[2]

On April 21, 2017, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the existing AD orders on sulfanilic acid from India and the PRC and the CVD order on sulfanilic acid from India would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Orders

The merchandise covered by the AD and CVD orders is all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.[4]

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the AD orders on sulfanilic acid from the PRC and India and the CVD order from India would be likely to lead to a continuation or recurrence of dumping and a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on sulfanilic acid from the PRC and India, and the CVD order on sulfanilic acid from India. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of this continuation.

These five-year (sunset) reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: May 2, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–09302 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Sulfanilic Acid from India and the People's Republic of China: Final Results of Expedited Fourth Sunset Reviews of Antidumping Duty Orders,* 82 FR 1321 (January 5, 2017); *Sulfanilic Acid From India: Final Results of Expedited Sunset Review of the Countervailing Duty Order,* 82 FR 1693 (January 6, 2017).

[3] *See* USITC Publication USITC Publication 4680, April 2017, *Sulfanilic Acid from China and India:* Inv. Nos. 701–TA–318 and 731–TA–538 and 561 (Fourth Review). *See* also *Sulfanilic Acid from China and India,* 82 FR 18776 (April 21, 2017).

[4] In response to a request from 3V Corporation, on May 5, 1999, the Department clarified that sodium sulfanilate processed in Italy from sulfanilic acid produced in India is within the scope of the AD and CVD orders on sulfanilic acid from India. *See Notice of Scope Rulings,* 65 FR 41957 (July 7, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–805]

Silicomanganese From Ukraine: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicomanganese from Ukraine. The period of review (POR) is August 1, 2015, through July 31, 2016. The review covers two exporters of the subject merchandise, PJSC Zaporozhye Ferroalloy Plant (ZFP), and PJSC Nikopol Ferroalloy Plant (NFP). The Department preliminarily finds, based on the application of adverse facts available, that subject merchandise has been sold in the United States at prices below normal value during the POR.

DATES: Effective May 9, 2017.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is silicomanganese from Ukraine. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.8040. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users

[1] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled, ''Decision Memorandum for the Preliminary Results in the Administrative Review of the Antidumping Duty Order on Silicomanganese from Ukraine; 2015–2016,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available at *http://enforcement.trade.gov/frn/.*

Adverse Facts Available

Because the mandatory respondents ZFP and NFP failed to provide requested information, we preliminarily determine to apply adverse facts available (AFA) to these companies, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. For further discussion, *see* the Preliminary Decision Memorandum.

Preliminary Results of Administrative Review

We preliminary determine that the following weighted-average dumping margins exist for the respondents for the period of August 1, 2015, through July 31, 2016:

Exporter/producer	Weighted-average dumping margin (percent)
PJSC Zaporozhye Ferroalloy Plant	163.00
PJSC Nikopol Ferroalloy Plant	163.00

Disclosure and Public Comment

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary results of review within five days of the date of publication of the notice of preliminary results of review in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department preliminarily determined each respondent's weighted-average dumping margin based on AFA, as described in the Preliminary Decision Memorandum, there are no calculations to disclose. This meets our regulatory obligation.

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[2] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[4]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

All documents submitted to the Department must normally be filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[5]

The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. For the final results, if we continue to rely on adverse facts available to establish ZFP's and NFP's weighted-average dumping margins we will instruct CBP to apply an *ad valorem* assessment rate of 163.00 percent to all entries of subject merchandise during the POR which were exported by ZFP and NFP. We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for subject merchandise exported by ZFP and NFP will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 163.00 percent, the all-others rate established in the investigation.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties

The Department is issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 3, 2017.

Ronald K. Lorentzen

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Summary
2. Background
3. Scope of the Order
4. Use of Facts Available and Adverse Inferences
5. Recommendation

[FR Doc. 2017–09354 Filed 5–8–17; 8:45 am]

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[2] *See* 19 CFR 351.309(c)(ii).

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.309(c)(2) and (d)(2).

[5] *See* 19 CFR 351.310(c).

[6] *See Suspension Agreement on Silicomanganese from Ukraine; Termination of Suspension Agreement and Notice of Antidumping Duty Order,* 66 FR 43838 (August 21, 2001) (clarifying that the ''Ukraine-Wide Rate'' of 163 percent applies to all producers and exporters of subject silicomanganese not specifically listed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Ukraine,* 59 FR 62711 (December 6, 1994) (where an AFA rate of 163 percent was applied to ZFP and NFP, the mandatory respondents in the original investigation).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–056, A–552–821]

Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

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

DATES: *Effective Date:* May 1, 2017.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten at (202) 482–1690, AD/CVD Operations, Enforcement & Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 11, 2017, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain tool chests and cabinets (tool chests) from the People's Republic of China (the PRC) and the Socialist Republic of Vietnam (Vietnam), filed in proper form on behalf of Waterloo Industries Inc. (the petitioner).[1] The AD petitions were accompanied by a countervailing duty (CVD) petition for tool chests from the PRC. The petitioner is a domestic producer of tool chests.[2]

On April 13 2017, the petitioner filed an amendment to the Petitions.[3] On April 13, 2017, the Department requested additional information and clarification of certain areas of the Petitions.[4] The petitioner filed responses to these requests on April 18 and 20, 2017.[5] On April 27, 2017, the petitioner filed an additional amendment to the Petition.[6]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of tool chests from the PRC and Vietnam are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

The Department finds that the petitioner filed these Petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioner is requesting.[7]

Period of Investigation

Because the Petitions were filed on April 11, 2017, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is October 1, 2016, through March 31, 2017.

Scope of the Investigations

The products covered by these investigations are tool chests from the PRC and Vietnam. For a full description of the scope of these investigations, *see* the ''Scope of the Investigations,'' in Appendix I of this notice.

Comments on Scope of the Investigations

During our review of the Petitions, the Department issued questions to and received responses from the petitioner pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.[8]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, May 22, 2017, which is the next business day after 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, June 1, 2017, which is 10 calendar days from the deadline for initial comments.[10]

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

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically-filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the

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[1] *See* Letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam—Petition for the Imposition of Antidumping and Countervailing Duties'' (April 11, 2017) (the Petitions).

[2] *See* Volume I of the Petitions, at 1.

[3] *See* Letter from the petitioner to the Secretary of Commerce ''Certain Tool Chests and Cabinets From the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's Amendment to Volume I of the Antidumping and Countervailing Duty Petition'' (April 13, 2017) (clarifying the scope of the imported merchandise that the petitioner intends to cover).

[4] *See* Country-specific letters to the petitioner from the Department concerning supplemental questions on each of the country-specific records (April 13, 2017); *see also* letter to the petitioner from the Department concerning supplemental questions on general issues (April 13, 2017) (General Issues Supplemental Questionnaire).

[5] *See* Letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's 2nd Amendment to Volume I of Antidumping and Countervailing Duty Petition'' (April 18, 2017) (General Issues 2nd Amendment); *see also* responses to the Department's April 13, 2017, questionnaires concerning supplemental questions on each of the country-specific records (April 18, 2017) (PRC AD Supplemental Response) (Vietnam AD Supplemental Response); and letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's Correction to Import Table (April 20, 2017) (Import Correction).

[6] *See* Letter to the Secretary of Commerce from the petitioner ''Certain Tool Chests and Cabinets From the People's Republic of China and the Socialist Republic of Vietnam—Petitioner's 3rd Amendment to Volume I of the Antidumping and Countervailing Duty Petition'' (April 27, 2017) (General Issues 3rd Amendment).

[7] *See* the ''Determination of Industry Support for the Petitions'' section below.

[8] *See* General Issues Supplemental Questionnaire; *see also* General Issues 2nd Amendment; and General Issues 3rd Amendment.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[10] *See* 19 CFR 351.303(b).

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

electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement & Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of tool chests to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

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

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on Tuesday, May 16, 2017. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Tuesday, May 23, 2017. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the records of the PRC and Vietnam less-than-fair-value investigations.

Determination of Industry Support for the Petitions

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

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

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

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

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2016.[15] In addition, the petitioner provided a letter of support from Metal Box International, stating that the company supports the Petitions and providing its own production of the domestic like product in 2016.[16] The petitioner identifies itself and Metal Box International as the companies constituting the U.S. tool chests industry and states that there are no other known producers of tool chests in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.[17]

Our review of the data provided in the Petitions and other information readily available to the Department indicates that the petitioner has established industry support for the Petitions.[18] First, the Petitions established support from domestic producers (or workers)

[12] *See* section 771(10) of the Act.

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

[14] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Tool Chests and Cabinets from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam, (Attachment II); and Antidumping Duty Investigation Initiation Checklist: Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam (Vietnam AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with, and hereby adopted by, this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[15] *See* Volume I of the Petitions, at 3 and Exhibit GEN–1.

[16] *Id.,* at 3 and Exhibit GEN–1.

[17] *Id.,* at 2–3 and Exhibits GEN–1 and GEN–2.

[18] *See* PRC AD Initiation Checklist and Vietnam AD Initiation Checklist, at Attachment II.

accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigations that it is requesting that the Department initiate.[22]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; declining production and shipments; declining net sales; and deteriorating financial performance.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate AD investigations of imports of tool chests from the PRC and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For the PRC, the petitioner based export price (EP) on pricing information for a sale of a combination tool chest and cabinet set produced in, and exported from, the PRC and sold in the United States.[26] For Vietnam, the petitioner based EP on pricing information for a sale of a combination tool chest and cabinet set produced in, and exported from Vietnam, and sold in the United States.[27] Where applicable, the petitioner made deductions from U.S. price for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. merchandise processing and harbor maintenance fees, and U.S. inland freight to the customer.[28] In addition, for the PRC, the petitioner deducted an amount for the irrecoverable portion of the value added tax in the PRC, consistent with the terms of sale.[29]

Normal Value

The petitioner stated that the Department has found the PRC and Vietnam to be non-market economy (NME) countries as recently as the month before the Petitions were filed with respect to the PRC,[30] and as recently as two weeks before the Petitions were filed with respect to Vietnam.[31] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for either the PRC or Vietnam has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of these investigations. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioner claims that South Africa is an appropriate surrogate country for the PRC because it is a market economy that is at a level of economic development comparable to that of the PRC, it is a significant producer of comparable merchandise, and public information from South Africa is available to value all FOPs.[32] The petitioner claims that Indonesia is an appropriate surrogate country for Vietnam because it is a market economy that is at a level of economic development comparable to that of Vietnam, it is a significant producer of comparable merchandise, and public information from Indonesia is available to value all FOPs.[33]

Based on the information provided by the petitioner, we believe it is appropriate to use South Africa as a surrogate country for the PRC and Indonesia as a surrogate country for Vietnam for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs no later than 30 days before the scheduled date of the preliminary determinations.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters is not reasonably available, the petitioner based the FOPs for materials, labor, and energy on its own production experience, adjusted for known differences.[34] The petitioner asserts that the production process for tool chests is similar regardless of whether the product is produced in the United States or in the PRC.[35] The

[19] *See* section 732(c)(4)(D) of the Act; *see also* PRC AD Initiation Checklist and Vietnam AD Initiation Checklist, at Attachment II.

[20] *See* PRC AD Initiation Checklist and Vietnam AD Initiation Checklist, at Attachment II.

[21] *Id.*

[22] *Id.*

[23] *See* Volume I of the Petitions, at 17–19 and Exhibits GEN–2, GEN–7, and GEN–11.

[24] *See* Volume I of the Petitions, at 12–26 and Exhibits GEN–2, GEN–6 through GEN–9, and GEN–11 through GEN–15.

[25] *See* PRC AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam, (Attachment III); and Vietnam AD Initiation Checklist, at Attachment III.

[26] *See* PRC AD Initiation Checklist.

[27] *See* Vietnam AD Initiation Checklist.

[28] *See* PRC AD Initiation Checklist and Vietnam AD Initiation Checklist.

[29] *See* PRC AD Initiation Checklist

[30] *See* Volume II of the Petition, at 1.

[31] *See* Volume III of the Petition, at 1.

[32] *See* Volume II of the Petition, at 2; *see also* section 773(c) of the Act.

[33] *See* Volume III of the Petition, at 1–2 and 5, and Exhibits AD–VN–2A, AD–VN–2B, and AD–VN–2C.

[34] *See* Volume II of the Petition, at 6, and Exhibits AD–PRC–8 and AD–PRC–9. *See also* Import Correction, at Revised Exhibit II–SUPP–6.

[35] *See* Volume II of the Petition, at 6 and Exhibit AD–PRC–8.

petitioner valued the estimated FOPs using surrogate values from South Africa.

Because information regarding the volume of inputs consumed by Vietnamese producers/exporters is not reasonably available, the petitioner based the FOPs for materials, labor, and energy on its own production experience, adjusted for known differences.[36] The petitioner asserts that the production process for tool chests is similar regardless of whether the product is produced in the United States or in the Vietnam.[37] The petitioner valued the estimated FOPs using surrogate values from Indonesia.

Valuation of Raw Materials

For the PRC, the petitioner valued direct materials based on publicly-available import data for South Africa obtained from the Global Trade Atlas (GTA) for the period September 2016 through February 2017 (*i.e.,* the most recent six month period for which data were available).[38] The petitioner excluded all import data from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries.[39] In addition, in accordance with the Department's practice, the petitioner excluded imports that were labeled as originating from an unidentified country.[40] The petitioner stated that the Chinese producers use a more expensive powder coat process to paint subject tool chests than the petitioner who uses a less expensive electrophoretic (e-coat) process.[41] Therefore, the petitioner adjusted its actual e-coat paint usage to reflect the additional material required under the Chinese producers' powder coat paint process.[42] The petitioner made offsets to cost for steel scrap generated by the production process, using its own experience and valued at the average cost of scrap imported into South Africa from GTA.[43]

For Vietnam, the petitioner valued direct materials using public import data for Indonesia obtained from GTA for the period February 2016 through July 2016 (*i.e.,* the most recent six-month period for which data were available).[44] The petitioner excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries.[45] In addition, in accordance with the Department's practice, the petitioner excluded imports that were labeled as originating from an unidentified country.[46] The petitioner stated that the Vietnamese producers use a more expensive powder coat process to paint subject tool chests than the petitioner who uses a less expensive e-coat process.[47] Therefore, the petitioner adjusted its actual e-coat paint usage to reflect the additional material required under Vietnamese producers' powder coat paint process.[48] Finally, the petitioner made an offset to cost for steel scrap generated in the production process, estimated using its own production experience and valued at the average cost of scrap imported into Indonesia from GTA.[49] The Department determines that the surrogate values used by the petitioner are reasonably available and, thus, are acceptable for purposes of initiation.

Valuation of Labor

For the PRC, the petitioner relied on 2012 data published by the International Labour Organization, inflated to 2016 using the South African Consumer Price Index.[50] For Vietnam, the petitioner relied on 2017 data published by the World Bank in *Doing Business 2017: Indonesia (DBI).*[51] As noted above, because producers in the PRC and Vietnam use a powder coat method to paint subject tool chests, which is more labor-intensive, the petitioner adjusted its actual labor usage for the e-coat process to reflect its actual labor usage experience in its powder painting line.[52]

Valuation of Energy

For the PRC, the petitioner valued natural gas using the average unit value of imports of liquid natural gas into South Africa. The petitioner converted that cost to an equivalent per million British Thermal Units of natural gas, and applied that rate to its estimated usage rate.[53] The petitioner valued electricity using an average per-kilowatt-hour electricity cost obtained from *Doing Business 2017: South Africa.* The petitioner applied that rate to the kilowatt hours of electricity that the petitioner estimated it consumed.[54]

For Vietnam, the petitioner valued natural gas using the average unit value of imports of liquid natural gas into Indonesia.[55] The petitioner converted that cost to an equivalent per million British Thermal Units of natural gas, and applied that rate to its estimated usage rate.[56] The petitioner valued electricity using a per-kilowatt-hour electricity cost in Indonesia in effect during the POI obtained from *DBI.*[57] The petitioner applied that rate to the number of kilowatt hours of electricity that the petitioner estimated it consumed.[58]

Valuation of Packing Materials

For the PRC, the petitioner determined the FOPs for packing materials based on its own experience in packing its products.[59] The petitioner indicated the packing materials would be cardboard shipping boxes, polybags, and Styrofoam, and valued them based on South African import values.[60]

[36] *See* Volume III of the Petition, at 5 and Exhibits AD–VN–7 and AD–VN–8; *see also* Vietnam AD Supplemental Response, at 6–8 and Exhibit III–Supp–4.

[37] *Id.*

[38] *Id.,* at 7 and Exhibit AD–PRC–10; *see also* PRC AD Supplemental Response, at Exhibit II–SUPP–3, and Import Correction, at Revised Exhibit II–SUPP–3.

[39] These countries include India, Indonesia, PRC, South Korea, Thailand, and Vietnam. *See* Volume II of the Petition, at Exhibit AD–PRC–10. *See also* PRC AD Supplemental Response, at Exhibit II–SUPP–3, and Import Correction, at Revised Exhibit II–SUPP–3.

[40] *Id.*

[41] *See* Volume II of the Petition, at 8 and Exhibit AD–PRC–10.

[42] *Id.*

[43] *See* Volume II of the Petition, at 7–8 and Exhibit AD–PRC–10. *See also* Import Correction, at Revised Exhibit II–SUPP–6.

[44] *See* Volume III of the Petition, at 6 and Exhibits AD–VN–7, AD–VN–8, and AD–VN–9; *see also* Vietnam AD Supplemental Response, at 6–8 and Exhibit III–Supp–4.

[45] *See* Volume III of the Petition, at Exhibit AD–VN–9.

[46] *Id.*

[47] *See* Volume III of the Petition, at 6–7 and Exhibit AD–VN–8.

[48] *Id.*

[49] *See* Volume III of the Petition, at 6, and Exhibits AD–VN–7, AD–VN–8, and AD–VN–9.

[50] *See* Volume II of the Petition, at 9 and Exhibit AD–PRC–13. *See also* PRC AD Supplemental Response, at 4–5 and Exhibits II–SUPP–4 and II–SUPP–5, and Import Correction, at Revised Exhibit II–SUPP–6.

[51] *See* Volume III of the Petition, at 7–8 and Exhibit AD–VN–12.

[52] *See* Volume II of the Petition, at 9 and Exhibit AD–CN–13; *see also* Volume III of the Petition, at 7–8 and Exhibit AD–VN–12.

[53] *See* Volume II of the Petition, at 8 and Exhibit AD–PRC–11. *See also* PRC AD Supplemental Response, at 4 and Exhibit II–SUPP–3, and Import Correction, at Revised Exhibit II–SUPP–6.

[54] See Volume II of the Petition, at 8 and Exhibit AD–PRC–12. *See also* Import Correction, at Revised Exhibit II–SUPP–6.

[55] *See* Volume III of the Petition, at 7 and Exhibit AD–VN–10.

[56] *See* Volume III of the Petition, at 7 and Exhibits AD–VN–7, AD–VN–8 and AD–VN–10.

[57] *See* Volume III of the Petition, at 7 and Exhibit AD–VN–11.

[58] *See* Volume III of the Petition, at 7 and Exhibits AD–VN–7, AD–VN–8 and AD–VN–11.

[59] See Volume II of the Petition, at 9 and Exhibits AD–PRC–9 and AD–PRC–10. *See also* Import Correction, at Revised Exhibit II–SUPP–6.

[60] See Volume II of the Petition, at 9 and Exhibits AD–PRC–9 and AD–PRC–10. *See also* PRC AD Supplemental Response, at 4 and Exhibit II–SUPP–

For Vietnam, the petitioner determined the FOPs for packing materials based on its own experience in packing its products.[61] The petitioner indicated the packing materials would be cardboard shipping boxes, polybags, and Styrofoam, and valued them based on Indonesian import values.[62]

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

For the PRC, the petitioner calculated ratios for factory overhead, SG&A expenses, and profit based on the 2016 consolidated financial statements of Trellidor Holdings Limited (Trellidor), a South African producer of security doors, shades, grates, and bars.[63] Because Trellidor had net financial income rather than net financial expenses, the petitioner reported financial expenses as zero, in accordance with Department practice.[64] The petitioner calculated a profit for Trellidor by dividing its operating profit before taxes by the sum of cost of sales and SG&A expenses. The resulting profit was added to the cost of production (COP) values for the sale product to arrive at total cost of production plus profit for the product.[65]

For Vietnam, the petitioner calculated ratios for factory overhead, SG&A expenses, and profit based on publicly available 2015 consolidated financial statements of PT Lion Metal Works Tbk (PT Lion), an Indonesian producer of filing cabinets, other steel office equipment, and other steel fabricated products.[66] Because PT Lion had net financial income rather than net financial expenses, the petitioner reported financial expenses as zero, in accordance with Department practice.[67] The petitioner calculated a profit for PT Lion by dividing its operating profit before taxes by the sum of cost of sales and SG&A expenses.[68] The resulting profit was added to the COP values for the sale product to arrive at the total cost of production plus profit for the product.[69]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of tool chests from the PRC and Vietnam are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margin for tool chests from the PRC is 159.99 percent[70] and from Vietnam is 21.85 percent.[71]

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the AD Petitions on tool chests from the PRC and Vietnam, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of tool chests from the PRC and Vietnam are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.[72] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[73] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these AD investigations.[74]

Respondent Selection

The petitioner named 47 companies in the PRC,[75] and five companies in Vietnam,[76] as producers/exporters of tool chests. In accordance with our standard practice for respondent selection in cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to these investigations and, in the event we determine to limit the number of companies individually examined, base respondent selection on the responses received. For these investigations, the Department will request Q&V information from known exporters and producers identified, with complete contact information, in the Petitions. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement & Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Exporters/producers of tool chests from the PRC or Vietnam that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance Web site. The Q&V response must be submitted by all PRC or Vietnam exporters/producers no later than May 11, 2017, which is ten days from the signature date of this notice. All Q&V responses must be filed electronically *via* ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[77] The specific requirements for submitting a separate-rate application are outlined in detail in the

3, and Import Correction, at Revised Exhibits II–SUPP–3 and II–SUPP–6.

[61] *See* Volume III of the Petition, at 8 and Exhibits AD–VN–7 and AD–VN–8.

[62] *See* Volume III of the Petition, at 8 and Exhibits AD–VN–7, AD–VN–8, and AD–VN–9.

[63] *See* Volume II of the Petition, at 10–11 and Exhibits AD–PRC–15. The petitioner was unable to find publicly-available financial statements for a South African producer of tool chests; it contends that Trellidor's production process is reasonably comparable to that of tool chests because both require bending metal in presses, welding, and painting. Further, the petitioner was unable to obtain unconsolidated financial statements from Trellidor and has therefore used the consolidated financial statements. *See* PRC AD Supplemental Response, at 5–6.

[64] *See* Volume II of the Petition, at 10 and Exhibit AD–PRC–15.

[65] *See* Volume II of the Petition, at 11 and Exhibits AD–PRC–9 and AD–PRC–15. *See also* Import Correction, at Revised Exhibit II–SUPP–6.

[66] *See* Volume III of the Petition, at 8 and Exhibit AD–VN–13. The petitioner explained that it was unable to find publicly available financial statements for an Indonesian producer of merchandise identical to the merchandise under investigation; the petitioner asserted that PT Lion manufactures products through processes that require bending metal in presses, welding, and painting, production methods which are reasonably comparable to those involved in the manufacture of the merchandise under investigation.

[67] *See* Volume III of the Petition, at 8 and Exhibits AD–VN–8 and AD–VN–14; *see also* Vietnam AD Supplemental Response, at 8 and Exhibit III–Supp–5.

[68] *See* Volume III of the Petition, at Exhibit AD–VN–14 and Vietnam AD Supplemental Response, at Exhibit III–Supp–5.

[69] *See* Volume III of the Petition, at Exhibit AD–VN–8 and Vietnam AD Supplemental Response, at Exhibit III–Supp–4.

[70] *See* PRC AD Initiation Checklist.

[71] *See* Vietnam AD Initiation Checklist.

[72] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[73] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[74] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[75] *See* Volume I of the Petitions, at 12 and Exhibit GEN–8.

[76] *See Id.,* at 12 and Exhibit GEN–9.

[77] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[78] Exporters and producers who submit a separate-rate application and are selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[79]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of the PRC and Vietnam *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of tool chests from the PRC and/or Vietnam are materially injuring or threatening material injury to a U.S. industry.[80] A negative ITC determination for any country will result in the investigation being terminated with respect to that country;[81] otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[82] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[83] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR part 351. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[84] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[85] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

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

[78] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[79] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[80] *See* section 733(a) of the Act.

[81] *Id.*

[82] *See* 19 CFR 351.301(b).

[83] *See* 19 CFR 351.301(b)(2).

[84] *See* section 782(b) of the Act.

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

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

Dated: May 1, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

The scope of these investigations covers certain metal tool chests and tool cabinets, with drawers, (tool chests and cabinets), from the People's Republic of China (the PRC) and the Socialist Republic of Vietnam (Vietnam). The scope covers all metal tool chests and cabinets, including top chests, intermediate chests, tool cabinets and side cabinets, storage units, mobile work benches, and work stations and that have the following physical characteristics:

(1) A body made of carbon, alloy, or stainless steel and/or other metals;

(2) two or more drawers for storage in each individual unit;

(3) a width (side to side) exceeding 15 inches for side cabinets and exceeding 21 inches for all other individual units but not exceeding 60 inches;

(4) a drawer depth (front to back) exceeding 10 inches but not exceeding 24 inches; and

(5) prepackaged for retail sale.

For purposes of this scope, the width parameter applies to each individual unit, *i.e.,* each individual top chest, intermediate top chest, tool cabinet, side cabinet, storage unit, mobile work bench, and work station.

Prepackaged for retail sale means the units are packaged in a cardboard box or other container suitable for retail display and sale. Subject tool chests and cabinets are covered whether imported in assembled or unassembled form. Subject merchandise includes tool chests and cabinets produced in the PRC or Vietnam but assembled, prepackaged for sale, or subject to other minor processing in a third country prior to importation into the United States. Similarly, it would include tool chests and cabinets produced in the PRC or Vietnam that are later found to be assembled, prepackaged for sale, or subject to other minor processing after importation into the United States.

Subject tool chests and cabinets may also have doors and shelves in addition to drawers, may have handles (typically mounted on the sides), and may have a work surface on the top. Subject tool chests and cabinets may be uncoated (*e.g.,* stainless steel), painted, powder coated, galvanized, or otherwise coated for corrosion protection or aesthetic appearance.

Subject tool chests and cabinets may be packaged as individual units or in sets. When packaged in sets, they typically include a cabinet with one or more chests that stack on top of the cabinet. Tool cabinets act as a base tool storage unit and typically have rollers, casters, or wheels to permit them to be moved more easily when loaded with tools. Work stations and work benches are tool cabinets with a work surface on the top that may be made of rubber, plastic, metal, wood, or other materials.

Top chests are designed to be used with a tool cabinet to form a tool storage unit. The top chests may be mounted on top of the base tool cabinet or onto an intermediate chest. They are often packaged as a set with tool cabinets or intermediate chests, but may also be packaged separately. They may be packaged with mounting hardware (*e.g.,* bolts) and instructions for assembling them onto the base tool cabinet or onto an intermediate tool chest which rests on the base tool cabinet. Smaller top chests typically have handles on the sides, while the larger top chests typically lack handles. Intermediate tool chests are designed to fit on top of the floor standing tool cabinet and to be used underneath the top tool chest. Although they may be packaged or used separately from the tool cabinet, intermediate chests are designed to be used in conjunction with tool cabinets. The intermediate chests typically do not have handles. The intermediate and top chests may have the capability of being bolted together.

Side cabinets are designed to be bolted or otherwise attached to the side of the base storage cabinet to expand the storage capacity of the base tool cabinet.

Subject tool chests and cabinets also may be packaged with a tool set included. Packaging a subject tool chest and cabinet with a tool set does not remove an otherwise covered subject tool chest and cabinet from the scope. When this occurs the tools are not part of the subject merchandise.

Excluded from the scope of the investigations are tool boxes, chests and cabinets with bodies made of plastic, carbon fiber, wood, or other non-metallic substances. Also excluded from the scope of the investigations are portable metal tool boxes. Portable metal tool boxes have each of the following characteristics: (1) Fewer than three drawers; (2) a handle on the top that allows the tool box to be carried by hand; and (3) a width that is 21 inches or less; and depth (front to back) not exceeding 10 inches.

Also excluded from the scope of the investigations are industrial grade steel tool chests and cabinets. The excluded industrial grade steel tool chests and cabinets are those:

(1) Having a body that is over 60 inches wide; or

(2) having each of the following physical characteristics:

(a) A body made of steel that is 0.055'' or more in thickness;

(b) all drawers over 21'' deep;

(c) all drawer slides rated for 200 lbs. or more; and

(d) not prepackaged for retail sale.

Also excluded from the scope of the investigations are work benches with fewer than two drawers. Excluded work benches have a solid top working surface, fewer than two drawers, are supported by legs and have no solid front, side, or back panels enclosing the body of the unit.

Also excluded from the scope of the investigations are metal filing cabinets that are configured to hold hanging file folders and are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 9403.10.0020.

Merchandise subject to the investigations is classified under HTSUS categories 9403.20.0021, 9403.20.0026, 9403.20.0030 and 7326.90.8688, but may also be classified under HTSUS category 7326.90.3500. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2017–09370 Filed 5–8–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

RIN 1840–AD14

[Docket ID: ED–2015–OPE–0020]

Request for Information Regarding Disclosures for Student Financial Accounts

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Request for information.

SUMMARY: The Secretary seeks information from the public regarding the major features and types of commonly assessed fees that postsecondary institutions (institutions) must disclose under 34 CFR 668.164(d)(4)(i)(B)(*2*) of the cash management regulations with regard to each of the institution's Tier 1 (T1) or Tier 2 (T2) arrangements as defined under § 668.164(e)(1) and (f)(1), respectively. The Secretary also requests feedback regarding the proposed format of these disclosures. The Secretary intends to use this information in developing a notice to be published in the **Federal Register** describing the format, content, and update requirements that institutions may follow to satisfy the requirements of § 668.164(d)(4)(i)(B)(*2*) with respect to the major features and assessed fees associated with the T1 and T2 arrangements.

DATES: We must receive your submission no later than June 8, 2017.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or email. 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 the ''Help'' tab.

Postal Mail, Commercial Delivery, or Hand Delivery: The Department of

Education (Department) strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments in response to this request, address them to Ashley Higgins, U.S. Department of Education, 400 Maryland Avenue SW., Room 6W234, Washington, DC 20202.

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.

This is a request for information (RFI) only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications (NIA). This RFI does not commit the Department to contract for any supply or service whatsoever. Further, the Department is not seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. If you do not respond to this RFI, you may still apply for future contracts and grants. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT: Ashley Higgins, U.S. Department of Education, 400 Maryland Avenue SW., Room 6W234, Washington, DC 20202. Telephone: (202) 453–6097 or by email: *Ashley.Higgins@ed.gov.*

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: On October 30, 2015, the Department published in the **Federal Register** the Program Integrity and Improvement final regulations (80 FR 67125). These final regulations contained provisions governing cash management, including the establishment of new rules regarding financial accounts marketed to students receiving title IV program funds under the Higher Education Act of 1965, as amended (HEA). The final regulations were intended to ensure that students have convenient access to their title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees on their title IV, HEA program funds, and are not led to believe they must open a particular financial account to receive their Federal student aid.

As part of the Secretary's effort to ensure that title IV recipients are informed but not misinformed about the terms of financial accounts offered to them through their institution, § 668.164(d)(4)(i)(B)(*2*) requires that prior to the student opening an account offered by a financial account provider, institutions list and identify the major features and commonly assessed fees associated with each financial account offered under a T1 or T2 arrangement, as well as the URL where the complete terms and conditions of each account may be obtained. The regulations do not require institutions to adopt the Secretary's format for this information once it is published in the **Federal Register**, but it does state that institutions that do meet the format, content, and update requirements in the Secretary's format will be deemed in compliance with the requirements of the regulations, with respect to the major features and assessed fees associated with the account offered pursuant to the T1 or T2 arrangement.

If an institution chooses to use its own format to comply with the disclosure requirements in § 668.164(d)(4)(i)(B)(*2*), or a format provided by its financial account provider, the institution must list the major features, commonly assessed fees, and the URL where the terms and conditions of each account may be obtained.

In the preamble of the final regulations, we committed to work with the Consumer Financial Protection Bureau (CFPB) to ensure that the disclosures required under § 668.164(d)(4)(i)(B)(*2*) do not conflict with theirs. We also assured stakeholders that, to the maximum extent possible, the disclosures would be as similar as possible to the CFPB's requirements to mitigate confusion and administrative burden. We believe that the proposed format described below meets those goals.

Request for Information

After consultation with the CFPB, the Secretary seeks feedback from the public regarding the proposed format, content, and update requirements for the disclosures. We propose that, in cases where the account provided is a prepaid account, as addressed in the CFPB's notice of final rule and official interpretations for Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (81 FR 83934), each institution's financial account provider can include, in the student choice menu described in § 668.164(d)(4)(i), the CFPB's appropriate short-form disclosure as described in 81 FR 83934. If an institution offering a prepaid card under its T1 or T2 arrangement meets the disclosure requirements established by the CFPB in 81 FR 83934, it would be in compliance with § 668.164(d)(4)(i)(*2*) of the cash management final regulations. However, because § 668.164(d)(4)(i)(A)(*1*) requires that institutions disclose in writing that students do not need to use a particular account to receive their Federal student aid, institutions using the CFPB disclosure template must also display a message, along with the disclosure, stating that students do not need to use the prepaid account to receive Federal student aid. We also recommend including, along with the message, a note that directs students to ask about other ways to receive their Federal student aid. We remind institutions that the CFPB's short-form template was not drafted to implement the Department's cash management regulations; accordingly, institutions using that template should not regard it as authorizing T1 or T2 arrangements that feature imposition of any fees otherwise prohibited under § 668.164(e) or (f), as applicable.

For institutions whose financial account provider either does not offer a prepaid account or chooses not to use the CFPB's short-form disclosure template, we propose the following format:

You do not need this account to receive your Federal student aid.
Ask the financial aid office about other ways to receive your money.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$0	$0	$0 in-network $1.95* out-of-network	N/A

ATM balance inquiry (in-network or out-of-network)	$0 or $1.95*
Customer service (automated or live agent)	$0 or $1.95 per call
Inactivity	$0

The financial institution offering this account charges # other types of fees.
Here are some of them:

[Additional fee type]	$1.00*
[Additional fee type]	$3.00

* This fee can be lower depending on how and where this card is used.

You may be offered overdraft features. Fees could apply. *OR* No overdraft/credit feature.

Your funds are/are not eligible for FDIC or NCUA insurance.

Find details and conditions for all fees and services in the terms and conditions of the account [link].

We propose that institutions choosing to use this form would be required to comply with the following instructions:

• The institution's disclosure must list the following fees: Periodic fees, per purchase fees (including point-of-sale fees), ATM withdrawal fees, cash reload fees, ATM balance inquiry fees, customer service fees, and inactivity fees. These fees are referred to as ''static fees'' because all institutions using the Secretary's format must list these fees on the disclosure, even if the amount of the fee is zero or the fee relates to a feature that is not offered as part of the specific account. In cases where the amount of any fee could vary, the disclosure must show the highest amount the account provider may charge for that fee, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the account is used. The asterisk would be included, for example, if point-of-sale fees differ depending on whether the cardholder is required to provide a PIN or signature. In cases where a static fee is not imposed, the institution may demonstrate that the fee is not applicable by placing ''N/A'' or an equivalent designation in the appropriate field.

• The disclosure must include the number of fee types the accountholder may be charged under the specific account program, excluding those fees that are either disclosed on the form or in close proximity as described below.

• The disclosure must also list the two additional fee types, if any, that generated the highest revenue from accountholders during the previous 24 months excluding static fees, any purchase price, any activation fees, and any fee types that generated less than five percent of the total revenue from accountholders, as well as the amounts of such additional fees. The two additional fee types would be determined for the specific financial account program or across programs with the same fee schedule. Institutions must ensure that the financial account provider reviews their fee revenue periodically and that they assist the institution in updating the disclosure if needed.

• The disclosure must include statements regarding linked overdraft credit features, Federal Deposit Insurance Corporation/National Credit Union Administration insurance, and a link to the terms and conditions of the account.

• The disclosure must include a written statement that students do not have to accept the T1 or T2 account and may recommend that students ask about other ways to receive their Federal student aid.

• In close proximity to the disclosure, though not necessarily within the disclosure itself, the institution must disclose the financial account provider's name, the name of the account, for T2 accounts any purchase price for the account (such as a fee for acquiring an access device or a replacement for an access device), and any fee for activating the account. If the financial account is a T1 account, the institution must also use this space to disclose that a student accountholder may access his or her title IV, HEA program funds in part and in full up to the account balance via domestic withdrawals and transfers free

of charge, during the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account, as required under § 668.164(e)(2)(v)(C). We also remind institutions that any account that falls under the definition of a T1 account may not charge fees for opening or activating the financial account or initially receiving or activating an access device, nor for overdrafts or fees assessed on point-of-sale transactions.

We request assistance from the community in evaluating the effectiveness of the proposed format, content, and update requirements. Specifically, the Secretary requests information on whether—

1. We have included all relevant fee information in the disclosures;
2. The disclosures would be inappropriate for a particular type of account;
3. Simply placing a ''$0'' or ''N/A'' in a place where no fee is charged would suffice to convey all of the necessary information;
4. There is a preferred start date for the requirement to include the two additional fee types that generated the highest revenue from accountholders during the previous 24 months;
5. Any conflict exists regarding other regulatory requirements, particularly with the proposal to allow institutions to use the CFPB disclosures described in 81 FR 83934 for this purpose;
6. Students may find the disclosures confusing or unhelpful and, if so, whether the commenter can suggest specific alternatives;
7. There are any other potential problems with including this format within the student choice menu to satisfy the requirements in § 668.164(d)(4)(i)(B)(*2*); or
8. Opportunities exist to further streamline the format of the template to reduce administrative burden.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free 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 Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 4, 2017.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2017–09349 Filed 5–8–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2017–ICCD–0062]

Agency Information Collection Activities; Comment Request; Evaluation of the ESSA Title I, Part C, Migrant Education Programs (Study Instruments)

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), 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 July 10, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0062. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 224–84, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carlos Martinez, 202–260–1440.

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: Evaluation of the ESSA Title I, Part C, Migrant Education Programs (Study Instruments).

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 450.

Total Estimated Number of Annual Burden Hours: 236.

Abstract: The purpose of this study is to examine how state agencies, school districts, local operating agencies, and schools implement education and transition programs for children and youth who are migratory students under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), Title I, Part C.

Dated: May 4, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–09372 Filed 5–8–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0004]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of Weighted Student Funding and School-Based Systems (Recruitment and Study Design Phase)

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), 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 June 8, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0004. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 224–84, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Oliver Schak, 202–453–5643.

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: Study of Weighted Student Funding and School-Based Systems (recruitment and study design phase).

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Government.

Total Estimated Number of Annual Responses: 685.

Total Estimated Number of Annual Burden Hours: 310.

Abstract: The purpose of this study is to examine districts that have implemented weighted student funding (WSF) systems. In doing so, the study team will investigate how these systems for funding schools have been implemented, the benefits in terms of enhanced school funding equity and improved resource allocation practices through more equitable distributions of funding to schools and increased principal autonomy, and the challenges each district may have faced in undertaking such a reform. To this end, the study team will conduct site visits to a set of nine case study districts that will involve in-person interviews with district officials and school staff involved in WSF system administration. In addition, the study team will collect and review relevant extant data (budget and audited expenditure files) and administer surveys to a nationally representative sample of principals and school district administrators.

Dated: May 4, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–09348 Filed 5–8–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–1530–000]

Pennsylvania Grain Processing, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pennsylvania Grain Processing, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 23, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09339 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–712–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.403(d)(2): L&U and Fuel Update Filing to be effective 6/1/2017.
Filed Date: 04/28/2017.
Accession Number: 20170428–5497.
Comment Date: 5:00 p.m. Eastern Time on Wednesday, May 10, 2017.

Docket Numbers: RP17–713–000.
Applicants: WBI Energy Transmission, Inc.
Description: WBI Energy Transmission, Inc. submits tariff filing per 154.204: 2017 Non-Conforming SA FT–1389 to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5111.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–714–000.
Applicants: WBI Energy Transmission, Inc.
Description: WBI Energy Transmission, Inc. submits tariff filing per 154.204: 2017 Non-Conforming SA FT–1420 to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5128.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–715–000.
Applicants: Southeast Supply Header, LLC.
Description: Southeast Supply Header, LLC submits tariff filing per 154.403(d)(2): 2017 SESH TUP/SBA Annual Filing to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5146.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–716–000.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System, L.L.C. submits tariff filing per 154.403(d)(2): 2017 GNGS TUP/SBA Filing to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5162.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–717–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline, L.L.C. submits tariff filing per 154.204: MNUS Misc. Cleanup Filing to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5173.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–718–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.204: 20170501 Gaines County Crossover Negotiated Rate to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5208.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–719–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits tariff filing per 154.403: 20170501 Winter PRA Fuel Rates to be effective 11/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5211.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–720–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: ETC Tiger Pipeline, LLC submits tariff filing per 154.204: Fuel Filing on 5–1–17 to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5212.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–721–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.204: Negotiated Capacity Release Agreements 5/1/17 to be effective 5/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5213.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–722–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Compliance with CP15–144 to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5221.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–723–000.
Applicants: Enable Gas Transmission, LLC.
Description: Enable Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Filing—May 2017 Cross Timbers Removals to be effective 5/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5245.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–724–000.
Applicants: Venice Gathering System, L.L.C.
Description: Venice Gathering System, L.L.C. submits tariff filing per 154.204: Motion to Place Interim Settlement Rates Into Effect to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5254.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–725–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: Fayetteville Express Pipeline LLC submits tariff filing per 154.204: Fuel Filing on 5–1–17 to be effective 6/1/2017.
Filed Date: 05/01/2017.
Accession Number: 20170501–5286.
Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 2, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09306 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation
Member Representatives Committee and Board of Trustees Meetings
Board of Trustees Corporate Governance and Human Resources
Committee, Finance and Audit Committee, Compliance Committee, and Standards Oversight and Technology Committee Meetings
The Ritz-Carlton, St. Louis, 100 Carondelet Plaza, St. Louis, MO 63105.
May 10 (8:00 a.m.–5:00 p.m. central time) and May 11 (8:30 a.m.–12:00 p.m. central time), 2017.

Further information regarding these meetings may be found at: *http://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings: Docket No. RR15–2, North American Electric Reliability Corporation.

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09342 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6902–084]

American Municipal Power, Inc.; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Amendment of Project License.

b. *Project No:* 6902–084.

c. *Date Filed:* January 18, 2017.

d. *Applicant:* American Municipal Power, Inc. (licensee).

e. *Name of Project:* Willow Island Lock and Dam Hydroelectric Project.

f. *Location:* Ohio River in Pleasants County, West Virginia and Washington County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Phillip E. Meier, American Municipal Power, Inc., 1111 Schrock Road, Suite 100, Columbus, OH 43229; phone (614) 540–0913.

i. *FERC Contact:* Michael Calloway at 202–502–8041, or *michael.calloway@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–6902–084.

k. *Description of Request:* The licensee requests that the Commission delete Article 404 from the project license. Article 404 requires the licensee to monitor fish mortality and develop a plan to reduce mortality and compensate West Virginia and Ohio Departments of Natural Resources for the remaining fish mortality. The licensee cited the Court of Appeals in *City of New Martinsville* v. *FERC,* 103 F. 3d 567 (D.C. Cir. 1996), and stated that since the court case the Commission policy regarding such compensation has changed. The licensee also cited several Commission decisions that have occurred since the court case as support for their request.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS; PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09343 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–69–000]

Buffalo Dunes Wind Project, LLC, and Enel Green Power North America, Inc. Alabama Power Company, and Southern Company Services, Inc., as Agent v. Southwest Power Pool, Inc.; Notice of Complaint

Take notice that on May 1, 2017, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Enel Green Power North America, Inc., on behalf its subsidiary, Buffalo Dunes Wind Project, LLC, and Southern Company Services, Inc., as agent for Alabama Power Company (collectively, Complainants) filed a formal complaint against Southwest Power Pool, Inc. (Respondent) alleging that Respondent's plans to allocate congestion management rights and revenues to customers with firm transmission service subject to redispatch for the upcoming 2017–2018 allocation year is unjust and unreasonable and unduly discriminatory and preferential, all as more fully explained in the complaint.

Complainants certify that a copy of the complaint and motion has been served on the contacts for Respondent as listed on the Commission's list of Corporate Officials on its Web site.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 31, 2017.

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09336 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–97–000.
Applicants: HA Wind V LLC, Morgan Stanley Wind LLC.
Description: Amendment to March 22, 2017 Application for Approval Under Section 203 of the Federal Power Act of Morgan Stanley Wind LLC, *et al.*
Filed Date: 4/28/17.
Accession Number: 20170428–5617.
Comments Due: 5 p.m. ET 5/8/17.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–103–000.
Applicants: CPV Fairview, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CPV Fairview, LLC.
Filed Date: 5/2/17.
Accession Number: 20170502–5152.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: EG17–104–000.
Applicants: Sunray Energy 2 LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sunray Energy 2 LLC.
Filed Date: 5/3/17.
Accession Number: 20170503–5065.
Comments Due: 5 p.m. ET 5/24/17.

Docket Numbers: EG17–105–000.
Applicants: Sunray Energy 3 LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sunray Energy 3 LLC.
Filed Date: 5/3/17.
Accession Number: 20170503–5067.
Comments Due: 5 p.m. ET 5/24/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2010–002; *ER12–1308 009*; *ER15–1471–008;. ER15–1672–007*; *ER16–2561 002.*
Applicants: Hancock Wind, LLC, Blue Sky West, LLC, Evergreen Wind Power II, LLC, Palouse Wind, LLC, Sunflower Wind Project, LLC.
Description: Notice of Non-Material Change in Status of Hancock Wind, LLC, *et al.*
Filed Date: 4/28/17.
Accession Number: 20170428–5619.
Comments Due: 5 p.m. ET 5/19/17.

Docket Numbers: ER17–965–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing per Order issued 4/7/2017 replacing placeholder effective date to be effective 1/30/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5155.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1528–000.
Applicants: St. Joseph Energy Center, LLC.
Description: Petition of St. Joseph Energy Center for Waiver of MOPR Deadline.
Filed Date: 4/28/17.
Accession Number: 20170428–5534.
Comments Due: 5 p.m. ET 5/19/17.

Docket Numbers: ER17–1529–000.
Applicants: West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, Trans-Allegheny Interstate Line Company, American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI *et al* submit Interconnection Agreement No. 2149 and ECSA SA No. 4559 to be effective 6/1/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5120.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1530–000.
Applicants: Pennsylvania Grain Processing, LLC.
Description: Baseline eTariff Filing: Market-based rate application to be effective 5/3/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5121.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1531–000.
Applicants: CPV Fairview, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 7/2/2017.
Filed Date: 5/2/17.
Accession Number: 20170502–5149.
Comments Due: 5 p.m. ET 5/23/17.

Docket Numbers: ER17–1532–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: § 205(d) Rate Filing: Amended and Restated WPC to be effective 5/3/2017.
Filed Date: 5/3/17.
Accession Number: 20170503–5029.
Comments Due: 5 p.m. ET 5/24/17.

Docket Numbers: ER17–1533–000.
Applicants: Pocahontas Prairie Wind, LLC.
Description: § 205(d) Rate Filing: CIS & Request for Cat 1 Central to be effective 5/4/2017.
Filed Date: 5/3/17.
Accession Number: 20170503–5109.
Comments Due: 5 p.m. ET 5/24/17.

Docket Numbers: ER17–1534–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notice of Cancellation of LGIA for ESEC2 Project to be effective 7/14/2017.
Filed Date: 5/3/17.
Accession Number: 20170503–5110.
Comments Due: 5 p.m. ET 5/24/17.

Docket Numbers: ER17–1535–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 4253, Queue No. AA1–073 to be effective 6/26/2017.
Filed Date: 5/3/17.
Accession Number: 20170503–5107.
Comments Due: 5 p.m. ET 5/24/17.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES17–31–000.
Applicants: Ameren Transmission Company of Illinois.
Description: Application of Ameren Transmission Company of Illinois for Authorization under Federal Power Act Section 204.
Filed Date: 4/28/17.
Accession Number: 20170428–5590.
Comments Due: 5 p.m. ET 5/19/17.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH17–14–000.
Applicants: IIF US Holding 2 GP, LLC.
Description: IIF US Holding 2 GP, LLC submits FERC 65–A Exemption Notification.
Filed Date: 4/28/17.
Accession Number: 20170428–5614.
Comments Due: 5 p.m. ET 5/19/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09337 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–1531–000]

CPV Fairview, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of CPV Fairview, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 23, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09340 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RD17–5–000 and IC17–6–000]

Commission Information Collection Activities (FERC–725E); Comment Request; Revision and Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of revised information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on revisions to the information collection, FERC–725E (Mandatory Reliability Standards for the Western Electric Coordinating Council) and will be submitting FERC–725E to the Office of Management and Budget (OMB) for review of the information collection requirements.

DATES: Comments on the collection of information are due July 10, 2017.

ADDRESSES: You may submit comments identified by Docket Nos. RD17–5–000 and IC17–6–000 by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725E, Mandatory Reliability Standards for the Western Electric Coordinating Council.

OMB Control No.: 1902–0246.

Type of Request: Three-year approval of the FERC–725E information collection requirements, as modified by Docket No. RD17–5–000.

Abstract: The information collected by the FERC–725E is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the grant of new authority by providing for a system of mandatory Reliability Standards developed by the Electric Reliability Organization (ERO). Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity.[1] A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.[2] On June 8, 2008, the Commission approved eight regional Reliability Standards submitted by the ERO that were proposed by the Western Electricity Coordinating Council (WECC).[3]

WECC promotes bulk electric system reliability in the Western Interconnection. WECC is the Regional Entity responsible for compliance monitoring and enforcement. In addition, WECC provides an environment for the development of Reliability Standards and the coordination of the operating and planning activities of its members as set forth in the WECC Bylaws.

There are several regional Reliability Standards in the WECC region. These regional Reliability Standards generally require entities to document compliance with substantive requirements, retain documentation, and submit reports to WECC.

BAL–002–WECC–2a (Contingency Reserve)[4] requires balancing authorities and reserve sharing groups to document compliance with the contingency reserve requirements described in the standard.

- BAL–004–WECC–02 (Automatic Time Error Correction) requires balancing authorities to document that time error corrections and primary inadvertent interchange payback were conducted according the requirements in the standard.
- FAC–501–WECC–1 (Transmission Maintenance) requires transmission owners with certain transmission paths to have a transmission maintenance and inspection plan and to document maintenance and inspection activities according to the plan.
- IRO–006–WECC–2 (Qualified Transfer Path Unscheduled Flow (USF) Relief)[5] requires balancing authorities and reliability coordinators document actions taken to mitigate unscheduled flow.
- PRC–004–WECC–2 (Protection System and Remedial Action Scheme Misoperation)[6] requires transmission owners, generator owners and transmission operators to document their analysis and/or mitigation due to certain misoperations on major transfer

[1] 16 U.S.C. 824o(e)(4).

[2] 16 U.S.C. 824o(a)(7) and (e)(4).

[3] *North American Electric Reliability Corp.,* 119 FERC 61,260 (2007).

[4] BAL–002–WECC–2 is included in the OMB-approved inventory for FERC–725E. On November 9, 2016, NERC and WECC submitted a joint petition for approval of an interpretation of BAL–002–WECC–2, to be designated BAL–002–WECC–2a. BAL–002–WECC–2a was approved by order in Docket No. RD17–3–000 on January 24, 2017. The Order determined: The proposed interpretation provides clarification regarding the types of resources that may be used to satisfy Contingency Reserve requirements in regional Reliability Standard BAL–002–WECC–2. BAL–002–WECC–2a did not trigger the Paperwork Reduction Act and did not affect the burden estimate. BAL–002–WECC–2a is being included in this Notice and the Commission's submittal to OMB as part of the FERC–725E.

[5] On December 20, 2013, NERC and WECC submitted a joint petition for approval of IRO–006–WECC–2 and retirement of IRO–006–WECC–1. IRO–006–WECC–2 was approved by order in Docket No. RD14–9–000 on May 13, 2014. Because the reporting burden for IRO–006–WECC–2 did not increase for entities that operate within the Western Interconnection, FERC submitted the order to OMB for information only. The burden related to IRO–006–WECC–2 does not differ from the burden of IRO–006–WECC–1, which is included in the OMB-approved inventory. IRO–006–WECC–2 is being included in this Notice and the Commission's submittal to OMB as part of FERC–725E.

[6] Order No. 818, issued on November 19, 2015 in Docket Nos. RM15–7, RM15–12, and RM15–13, stated in part: ''NERC requested approval of the following Reliability Standards to incorporate the proposed definition of Remedial Action Scheme and eliminate use of the term Special Protection System: . . . PRC–004–WECC–2, . . . NERC did not propose any changes to the Violation Risk Factors or Violation Severity Levels for the modified standards.'' *Revisions to Emergency Operations Reliability Standards; Revisions to Undervoltage Load Shedding Reliability Standards; Revisions to the Definition of* ''*Remedial Action Scheme*'' *and Related Reliability Standards,* Order No. 818, 153 FERC ¶ 61,228, at P 23 n.31 (2015). In addition, Order No. 818 stated: ''The Commission approved the definition of Special Protection System (Remedial Action Scheme) in Order No. 693. We approve a revision to the previously approved definition. The revisions to the Remedial Action Scheme definition and related Reliability Standards are not expected to result in changes to the scope of systems covered by the Reliability Standards and other Reliability Standards that include the term Remedial Action Scheme. Therefore, the Commission does not expect the revisions to affect applicable entities' current reporting burden.'' *Id.* P 67. The change to the definition did not affect the burden of PRC–004–WECC–1 (which is included in the current OMB-approved inventory). PRC–004–WECC–2 (the current version of the standard) is being included in this Notice and the Commission's submittal to OMB as part of the FERC–725E.

paths. This standard requires that documentation be kept for six years.

• VAR–002–WECC–2 (Automatic Voltage Regulators (AVR)) [7] requires generator operators and transmission operators to provide quarterly reports to the compliance monitor and have evidence related to their synchronous generators, synchronous condensers, and automatic voltage regulators.

The associated reporting and recordkeeping requirements included in the standards above are not being revised, and the Commission will be submitting a request to OMB to extend these requirements for three years. The Commission's request to OMB will also reflect the following:

• Eliminating the burden associated with regional Reliability Standard TOP–007–WECC–1a, which is being retired (addressed in Docket No. RD16–10); [8] and

• Implementing the regional Reliability Standard VAR–501–WECC–3 and the retirement of regional Reliability Standard VAR–501–WECC–2 (addressed in Docket No. RD17–5 and discussed below).

On March 10, 2017, NERC and WECC filed a joint petition in Docket No. RD17–5–000 [9] requesting Commission approval of: (a) Regional Reliability Standard VAR–501–WECC–3 (Power System Stabilizers), and (b) the retirement of then-existing regional Reliability Standard VAR–501–WECC–2. The petition states: ''Regional Reliability Standard VAR–501–WECC–3 establishes the performance criteria for power system stabilizers to help ensure the Western Interconnection is operated in a coordinated manner under normal and abnormal conditions.'' VAR–501–WECC–3 was approved by order in Docket No. RD17–5–000 on April 28, 2017. In this document, we provide estimates of the burden and cost related to those revisions to FERC–725E.

Type of Respondents: Balancing authorities, reserve sharing groups, transmission owners, reliability coordinators, transmission operators, generator operators, and generator owners.

Estimate of Annual Burden [10]*:* Details follow on the changes in Docket No. RD17–5–000, and on the continuing burdens, which will be submitted to OMB for approval in a consolidated package under FERC–725E.

Estimate of Changes to Burden Due to Docket No. RD17–5: The joint petition requested Commission approval of regional Reliability Standard VAR–501–WECC–3 and retirement of then-existing regional Reliability Standard VAR–501–WECC–2. The estimated effects on burden and cost [11] are as follow:

FERC–725E, MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, CHANGES IN DOCKET NO. RD17–5–000

Entity	Number of respondents [12] (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hrs. & cost per response ($) (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1) = (6)
Retirement Of Former Standard VAR–501–WECC–2 and Associated Reductions						
Reporting Requirements (Annually)						
Generator Operators	249	4	996	1 hr.; $76.22	996 hrs.; $75,915.12 (reduction).	$304.88 (reduction)
Recordkeeping Requirements (Annually)						
Generator Operators	249	4	996	0.5 hrs.; $31.19	498 hrs.; $15,532.62 (reduction).	$62.38 (reduction)
Reductions (Annually)					1,494 hrs.; $91,447.74 (reduction).	
New Standard VAR–501–WECC–3						
Reporting Requirements.						
Generator Owners and/or Operators, in Year 1.	291	3	873	1 hr.; $76.99	873 hrs.; $67,212.27	$230.97
Generator Owners and/or Operators, in Year 2 and Ongoing.	291	2	582	1 hr.; $76.99	582 hrs.; $44,808.18	$153.98
Recordkeeping Requirements						
Generator Owners and/or Operators, in Year 1.	291	3	873	1 hr.; $31.19	873 hrs.; $27,228.87	$93.57
Generator Owners and/or Operators, in Year 2 and Ongoing.	291	2	582	0.5 hrs.; $15.595	291 hrs.; $9,076.29	$31.19
New Burden, in Year 1					1,746 hrs.; $94,441.14	
New Burden, in Year 2 & Ongoing					873 hrs.; $53,884.47	
Net Burden Change in Year 1					+252 hrs (increase)	

[7] VAR–002–WECC–2 was approved by order in Docket No. RD15–1 on March 3, 2015. Regional Reliability Standard VAR–002–WECC–2 made a non-material or non-substantive change to the reporting and recordkeeping requirements associated with VAR–002–WECC–1 (currently included in the OMB-approved inventory). VAR–002–WECC–2 (the current version of the standard) is being included in this Notice and the Commission's submittal to OMB as part of FERC–725E.

[8] The Commission approved the retirement of regional Reliability Standard TOP–007–WECC–1a (System Operating Limits (SOL)) by order in Docket No. RD16–10–000 on March 10, 2017. On March 31, 2017, the Commission issued a 60-day Notice requesting public comment on the effect on burden. The Notice is available at 82 FR 16823 (April 6, 2017). Comments are due in Docket No. RD16–10–000 by June 5, 2017. *See* Docket No. RD16–10–000 for additional information (including the estimated annual burden reduction of 1,188 hours).

[9] The joint petition and exhibits are posted in the Commission's eLibrary system in Docket No. RD17–5–000.

[10] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[11] For VAR–501–WECC–3, the hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics for three positions involved in the reporting and recordkeeping requirements. These figures include salary (*http://bls.gov/oes/current/naics2_22.htm*) and benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) and are:

• Manager: $89.07/hour
• Engineer: $64.91/hour
• File Clerk: $31.19/hour

The hourly cost for the reporting requirements ($76.99) is an average of the cost of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

FERC–725E, MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, CHANGES IN DOCKET NO. RD17–5–000—Continued

Entity	Number of respondents [12] (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hrs. & cost per response ($) (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1) = (6)
Net Burden Change in Year 2 and Ongoing.	.....	.....	.....	.....	−621 hrs. (decrease)	

Estimate of Continuing Annual Burden for Renewal and New Reliability Standard VAR–501–WECC–3: [13] The Commission estimates the annual public reporting burden and cost [14] as follows for FERC–725E. (This information will be submitted to OMB for approval.) These estimates reflect:

- Reliability Standards in FERC–725E which continue and remain unchanged (BAL–002–WECC–2a, BAL–004–WECC–02, FAC–501–WECC–1, IRO–006–WECC–2, PRC–004–WECC–2, and VAR–002–WECC–2);
- Removal of burden due to the retirement of TOP–007–WECC–1a (discussed in Docket No. RD16–10–000)
- Additional burden due to VAR–501–WECC–3, and removal of burden due to the retirement of VAR–501–WECC–2 (detailed above and in Docket No. RD17–5–000).

(The burdens and costs related to TOP–007–WECC–1a and VAR–501–WECC–2 [the standards being retired] are omitted from the table below, which describes the new and continuing information collection requirements.)

FERC–725E, MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL

[New and Continuing Information Collection Requirements]

Entity	Number of respondents [15] (1)	Annual number of responses per respondent (2)	Annual number of responses (1)*(2) = (3)	Average burden hrs. & cost per response ($) (4)	Total annual burden hours & total annual cost ($) (3)*(4) = (5)	Cost per respondent ($) (5)÷(1) = (6)
Reporting Requirements						
Balancing Authorities	34	1	34	21 hrs., $1,616.79	714 hrs., $54,970.86	$1,616.79
Generator Operators	228	1	228	10 hrs., $769.90	2,280 hrs., $175,537.20.	$769.90
Transmission Operators applicable to standard VAR–002.	86	4	344	10 hrs., $769.90	3,440 hrs., $264,845.60.	$769.90
Transmission Owners that operate qualified transfer paths.	5	3	15	40 hrs., $3,079.60	600 hrs., $46,194.00	$3,079.60
Reliability Coordinators	1	1	1	1 hr., $76.99	1 hr., $76.99	$76.99
Reserve Sharing Group	3	1	3	1 hr., $76.99	3 hrs., $230.97	$76.99
Generator Owners and/or Operators , in Year 1, per RD17–5 for VAR–501–WECC–3.	291	3	873	1 hr.; $76.99	873 hrs.; $67,212.27	$230.97
Generator Owners and/or Operators, in Year 2 and Ongoing, per RD17–5 for VAR–501–WECC–3.	291	2	582	1 hr.; $76.99	582 hrs.; $44,808.18	$153.98
Sub-Total for Reporting Requirement in Year 1.	.....	.....	.....	.....	7,911 hrs.; $609,067.89.	
Sub-Total for Reporting Requirement Burden in Year 2 & ongoing.	.....	.....	.....	.....	7,620 hrs.; $586,663.80.	
Recordkeeping Requirements						
Balancing Authorities	34	1	34	2.1 hrs., $65.50	71.4 hrs., $2,226.97	$65.50
Balancing Authorities (IRO–006)	34	1	34	1 hr., $31.19	34 hrs., $1,060.46	$31.19
Generator Operators	228	1	228	1 hr., $31.19	228 hrs., $7,111.32	$31.19
Transmission Operator (VAR–002)	86	1	86	4 hrs., $124.76	344 hrs., $10,729.36	$124.76
Transmission Owner that operate qualified transfer paths.	5	1	5	12 hrs., $374.28	60 hrs., $1,871.40	$374.28
Reliability Coordinator	1	1	1	1 hr.; $31.19	1 hr.; $31.19	$31.19
Generator Owners and/or Operators, in Year 1, per RD17–5 for VAR–501–WECC–3.	291	3	873	1 hr.; $31.19	873 hrs.; $27,228.87	$93.57

[12] The number of respondents is derived from the NERC Compliance Registry as of March 10, 2017.

[13] The Commission is also removing 36 one-time burden hours associated with the requirements in Docket No. RM13–13. The one-time burden has been completed and will now be administratively removed on submittal to OMB. Those hours are not included in the table.

[14] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics for three positions involved in the reporting and recordkeeping requirements. These figures include salary (*http://bls.gov/oes/current/naics2_22.htm*) and other associated benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) and are:

- Manager: $89.07/hour
- Engineer: $64.91/hour
- File Clerk: $31.19/hour

The hourly cost for the reporting requirements ($76.99) is an average of the cost of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

FERC–725E, MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL—Continued

[New and Continuing Information Collection Requirements]

Entity	Number of respondents [15] (1)	Annual number of responses per respondent (2)	Annual number of responses (1)*(2) = (3)	Average burden hrs. & cost per response ($) (4)	Total annual burden hours & total annual cost ($) (3)*(4) = (5)	Cost per respondent ($) (5)÷(1) = (6)
Generator Owners and/or Operators, in Year 2 and Ongoing, per RD17–5 for VAR–501–WECC–3.	291	2	582	0.5 hrs.; $15.595	291 hrs.; $9,076.29	$31.19
Sub-Total for Recordkeeping Requirements in Yr. 1.					1,611.4 hrs.; $50,259.57.	
Sub-Total for Recordkeeping Requirements in Yr. 2 & ongoing.					1,029.4 hrs.; $32,106.99.	
TOTAL FOR FERC–725E, IN YR. 1.					9,522.4 hrs.; $659,327.46.	
TOTAL FOR FERC–725E, IN YR. 2 & ONGOING.					8,649.4 hrs.; $618,770.79.	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09341 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–239–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

Take notice that on April 25, 2017, Equitrans, L.P. (Equitrans), 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222 filed a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act for authorization to abandon two wells in Equitrans' Logansport Storage Field located in Marion County, West Virginia. Specifically, Equitrans seeks to plug and abandon two natural gas storage injection and withdrawal wells, Logansport 6188 and Logansport 8271, which were damaged as a result of undermining activity that took place in 2010 and are at risk for gas loss. The abandonment will have no effect on the certificated physical parameters of the field, and there will be no effect on service to any of Equitrans' customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Paul W. Diehl, Counsel, Midstream at Equitrans, L.P., 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, by phone (412) 395–5540, or by fax (412) 553–7781, or by email at *pdiehl@eqt.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the

Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 3, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09338 Filed 5–8–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9961–65–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; INVISTA Victoria Victoria, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the land disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to INVISTA Victoria for nine Class I hazardous waste injection wells located at their Victoria, Texas. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by INVISTA Victoria, of the specific restricted hazardous wastes identified in this exemption reissuance, into Class I hazardous waste injection Wells WDW–004, WDW–028, WDW–029, WDW–030, WDW–105, WDW–106, WDW–142, WDW–143, and WDW–144 until December 31, 2025, unless EPA moves to terminate this exemption or other petition condition limitations are reached. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. A public notice was issued February 3, 2017, and the public comment period closed on March 21, 2017, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of March 28, 2017.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: April 6, 2017.

William K. Honker,

Director, Water Division.

[FR Doc. 2017–09379 Filed 5–8–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9962–03–Region 1]

2017 Spring Joint Meeting of the Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the joint 2017 Spring Meeting of the Ozone Transport Commission (OTC) and the Mid-Atlantic Northeast Visibility Union (MANE–VU). The meeting agenda will include topics regarding reducing ground-level ozone precursors and matters relative to Regional Haze and visibility improvement in Federal Class I areas in a multi-pollutant context.

DATES: The meeting will be held on June 6, 2017 starting at 9:15 a.m. and ending at 4:00 p.m.

ADDRESSES: *Location:* The Gideon Putnam, 24 Gideon Putnam Road, Saratoga Springs, NY, 12866, 518–226–4700.

FOR FURTHER INFORMATION CONTACT: *For documents and press inquiries contact:* Ozone Transport Commission, 444 North Capitol Street NW., Suite 322, Washington, DC 20001; (202) 508–3840; email: *ozone@otcair.org*; Web site: *http://www.otcair.org*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, and the St. Regis Mohawk Tribe, along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by email: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*.

Dated: April 17, 2017.

Deborah A. Szaro,

Acting Regional Administrator, Region I.

[FR Doc. 2017–09388 Filed 5–8–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0675; FRL–9960–84]

TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: On December 15, 2016, EPA issued a notice in the **Federal Register** requesting public comment on whether revision to the current size standards for small manufacturers and processors, which are used in connection with reporting regulations under the Toxic Substances Control Act (TSCA) section 8(a), is warranted. This document reopens the comment period for 15

days. The comment period is being reopened in order to allow the public to consider feedback received by EPA from the Small Business Administration (SBA) as a result of a consultation request on EPA's preliminary determination on whether revision to these standards is warranted.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0675, must be received on or before May 24, 2017.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of December 15, 2016 (81 FR 90840) (FRL–9956–03).

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Lynne Blake-Hedges, Chemistry, Economics, and Sustainable Strategies Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8807; email address: *blake-hedges.lynne@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** document of December 15, 2016. In that document, EPA requested comment on its preliminary determination on whether a revision of the standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of TSCA sections 8(a)(1) and 8(a)(3) was warranted. On December 7, 2016, EPA also submitted a consultation request to the SBA on the adequacy of the current standards and requested a response within 15 business days of receipt (Ref. 1). EPA had intended to add SBA's response to the docket to give the public an opportunity to review the response to inform their comments on EPA's preliminary determination. EPA received feedback on the consultation request on behalf of the SBA Administrator on April 5, 2017 (Ref. 2), concluding the consultation with SBA. Consistent with section 8(a)(3)(C), EPA is providing public notice and an opportunity for comment on its preliminary determination after consultation with the Administrator of SBA.

EPA is hereby reopening the comment period for 15 days to May 24, 2017.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of December 15, 2016 (81 FR 90840) (FRL–9956–03). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Jones, Jim. Letter to Maria Contreras-Sweet. ''Consultation under Section 8(a)(3)(C) the Toxic Substances Control Act''. December 2016.
2. Linda McMahon. Response to Consultation Request under Section 8(a)(3)(C) the Toxic Substances Control Act. April 2017.

Authority: 15 U.S.C. 2607(a)(3)(C).

Dated: April 21, 2017.

Wendy Cleland-Hamnett,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–09380 Filed 5–8–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10338—North Georgia Bank, Watkinsville, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for North Georgia Bank, Watkinsville, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of North Georgia Bank on February 4, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: May 4, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–09327 Filed 5–8–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, May 11, 2017 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor).

STATUS: This meeting, open to the public, has been canceled.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2017–09429 Filed 5–5–17; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR § 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 24, 2017.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Paul Skorheim, Sauk Centre, Minnesota, individually and as a trustee of the Minnesota National Bank Retirement Savings & Employee Stock Ownership Plan & Trust, Sauk Centre, Minnesota;,* to retain 10 percent or more of the shares of Sauk Centre Financial Services, Inc., Sauk Centre, Minnesota, and thereby indirectly retain shares of Minnesota National Bank, Sauk Centre, Minnesota.

Additionally, the ESOP's trustees, Paul Skorheim, and Donald John, both of Sauk Centre, Minnesota, as members of a group acting in concert with the ESOP, to retain voting shares of SCFS, and thereby indirectly retain voting shares of Minnesota National Bank, Sauk Centre, Minnesota.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *James R. Cole, Jr., Natchitoches, Louisiana; individually and as trustee of the James R. Cole, Sr. Family Trust; Elizabeth Cole, Natchitoches, Louisiana, as trustee of the DALOCO Trust; and Edith Palmer, Many, Louisiana, together a group acting in concert;* to retain voting shares of Sabine Bancshares, Inc., Many, Louisiana, and indirectly retain shares of Sabine State Bank and Trust Company, Many, Louisiana.

Board of Governors of the Federal Reserve System, May 4, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–09357 Filed 5–8–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2017.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *United Community Banks, Inc.,* Blairsville, Georgia; to merge with HCSB Financial Corporation, and thereby indirectly acquire Horry County State Bank, both of Loris, South Carolina.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

Minnesota National Bank Retirement Savings & Employee Stock Ownership Plan & Trust, Sauk Centre, Minnesota; to acquire 11.19 percent of the voting shares of Sauk Centre Financial Services, Inc., Sauk Centre, Minnesota, and thereby indirectly acquire shares of Minnesota National Bank, Sauk Centre, Minnesota.

Board of Governors of the Federal Reserve System, May 4, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–09358 Filed 5–8–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011; Docket 2016–0053; Sequence 35]

Submission for OMB Review; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning preaward survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). A notice was published in the **Federal Register** on November 8, 2016. No comments were received.

DATES: Submit comments on or before June 8, 2017.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Sosa/IC 9000–0011.

Instructions: Please submit comments only and cite Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence related to this

collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–219–0202 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.,* capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor: (i) Has adequate financial resources, or the ability to obtain such resources; (ii) is able to comply with required delivery schedule; (iii) has a satisfactory record of performance; (iv) has a satisfactory record of integrity; and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence. This data is entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. These standard forms are not cumulative. The surveying activity completes only the applicable standard form(s) necessary to determine contractor responsibility in each case.

B. Annual Reporting Burden

Standard Form 1403—Preaward Survey of Prospective Contractor (General)

Number of Respondents: 1,116.
Responses per Respondent: 1.
Annual Responses: 1,116.
Hours per Response: 24.
Total Burden Hours: 26,784.
Frequency: On occasion.
Affected Public: Businesses or other for-profit and not-for profit institutions.

Standard Form 1404—Preaward Survey of Prospective Contractor Technical

Number of Respondents: 558.
Responses per Respondent: 1.
Annual Responses: 558.
Hours per Response: 24.
Total Burden Hours: 13,392.
Frequency: On occasion.
Affected Public: Businesses or other for-profit and not-for profit institutions.

Standard Form 1405—Preaward Survey of Prospective Contractor Production

Number of Respondents: 372.
Responses per Respondent: 1.
Annual Responses: 372.
Hours per Response: 24.
Total Burden Hours: 8,928.
Frequency: On occasion.
Affected Public: Businesses or other for-profit and not-for profit institutions.

Standard Form 1406—Preaward Survey of Prospective Contractor Quality Assurance

Number of Respondents: 372.
Responses per Respondent: 1.
Annual Responses: 372.
Hours per Response: 24.
Total Burden Hours: 8,928.
Frequency: On occasion.
Affected Public: Businesses or other for-profit and not-for profit institutions.

Standard Form 1407—Preaward Survey of Prospective Contractor Financial Capability

Number of Respondents: 558.
Responses per Respondent: 1.
Annual Responses: 558.
Hours per Response: 24.
Total Burden Hours: 13,392.
Frequency: On occasion.
Affected Public: Businesses or other for-profit and not-for profit institutions.

Standard Form 1408—Preaward Survey of Prospective Contractor Accounting System

Number of Respondents: 744.
Responses per Respondent: 1.
Annual Responses: 744.
Hours per Response: 24.
Total Burden Hours: 17,856.
Frequency: On occasion.
Affected Public: Businesses or other for-profit and not-for profit institutions.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence.

Dated: May 3, 2017.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2017–09305 Filed 5–8–17; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following committee meeting:

Time and Date: 11:00 a.m.–2:00 p.m., EDT, June 6, 2017.

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1–866–659–0537 and the passcode is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2016 pursuant to Executive Order 13708, and will expire on September 30, 2017.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters for Discussion: The agenda for the conference call includes: Reporting Final SEC Petition Vote Count from March ABRWH Meeting for Rocky Flats Plant SEC petition (Golden, CO) and Carborundum Company SEC petition (Niagara Falls, NY); Follow-up on ABRWH March Meeting Discussion on General Steel Industries Site Profile Review; Work Group and Subcommittee Reports; Status of SEC Petitions Update; Plans for the August 2017 Advisory Board Meeting; and Advisory Board Correspondence. The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore M. Katz, M.P.A., Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop: E–20, Atlanta, Georgia 30329, Telephone (513)533–6800, Toll Free 1–800–CDC–INFO, Email *ocas@cdc.gov.* The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–09321 Filed 5–8–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH or Institute)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Times and Dates: 8:00 a.m.–5:00 p.m., EDT, June 20, 2017 (Closed); 8:00 a.m.–5:00 p.m., EDT, June 21, 2017 (Closed)

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: 703–684–5900, Fax: 703–684–0653.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters for Discussion: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, Ph.D., NIOSH Health Scientist, CDC, 2400 Executive Parkway, Mailstop E–20, Atlanta, Georgia 30345, Telephone: (404) 498–2511, Fax: (404) 498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–09322 Filed 5–8–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Meeting of the National Advisory Council on Migrant Health

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given that a meeting is scheduled for the National Advisory Council on Migrant Health (NACMH/Council). This meeting will be open to the public. The agenda for the NACMH meeting can be obtained by contacting the Designated Federal Officer (DFO) or accessing the Council Web site: *https://bphc.hrsa.gov/qualityimprovement/strategicpartnerships/nacmh/index.html.*

DATES: The meeting will be held on June 6, 2017, 8:30 a.m.to 5:00 p.m. and June 7, 2017, 8:30 a.m. to 5:00 p.m.

ADDRESSES: The address for the meeting is Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, Maryland 20852, (301) 822–9200.

FOR FURTHER INFORMATION CONTACT: All requests for information regarding the NACMH should be sent to Esther Paul, DFO, NACMH, HRSA, in one of three ways: (1) Send a request to the following address: Esther Paul, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, 16N38B, Rockville, Maryland 20857; (2) call (301) 594 4300; or (3) send an email to *epaul@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The NACMH is a non-discretionary advisory body mandated by the Public Health Service (PHS) Act, Title 42 U.S.C. 218, to advise, consult with, and make recommendations to the Secretary of

HHS and the Administrator of HRSA regarding the organization, operation, selection, and funding of migrant health centers and other entities funded under section 330(g) of the PHS Act (42 U.S.C. 254b). The NACMH Charter requires that the Council meet at least twice per year to discuss services and issues related to the health of migrant and seasonal agricultural workers and their families and to formulate their recommendations to the HHS Secretary and HRSA Administrator. The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from Federal officials and experts on agricultural worker issues, including the status of agricultural worker health at the local and national levels. Agenda items are subject to change as priorities indicate.

Public Participation: Members of the public will not be able to provide oral comments during the meeting. Please provide any written questions or comments for the NACMH to the DFO using the address and phone number provided above by May 23, 2017. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the DFO at least 10 days prior to the meeting.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2017–09329 Filed 5–8–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0014; OMB No. 1660–0016]

Agency Information Collection Activities: Proposed Collection; Comment Request; Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

DATES: Comments must be submitted on or before July 10, 2017.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2017–0014. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Emergency Management Specialist, Federal Insurance and Mitigation Administration, DHS/FEMA, 202–646–3085. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* The Federal Emergency Management Agency (FEMA) administers the NFIP and maintains the maps that depict flood hazard information. In 44 CFR 65.3, communities are required to submit technical information concerning flood hazards and plans to avoid potential flood hazards when physical changes occur. In 44 CFR 65.4, communities are provided the right to submit technical information when inconsistencies on maps are identified. In order to revise the Base (l-percent annual chance) Flood Elevations (BFEs), Special Flood Hazard Areas (SFHAs), and floodways presented on the NFIP maps, a community must submit scientific or technical data demonstrating the need for a revision. The NFIP regulations cited in 44 CFR part 65 outline the data that must be submitted for these requests. This collection serves to provide a standard format for the general information requirements outlined in the NFIP regulations, and helps establish an organized package of the data needed to revise NFIP maps.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0016.

FEMA Forms: FEMA Form 086–0–27, Overview and Concurrence Form; FEMA Form 086–0–27A, Riverine Hydrology and Hydraulics Form; FEMA Form 086–0–27B, Riverine Structures Form; FEMA Form 086–0–27C, Coastal Analysis Form; FEMA Form 086–0–27D, Coastal Structures Form; FEMA Form 086–0–27E, Alluvial Fan Flooding Form.

Abstract: The forms in this information collection are used to determine if the collected data will result in the modification of a BFE, a SFHA, or a floodway. Once the information is collected, it is submitted to FEMA for review and is subsequently included on the NFIP maps. Using these maps, lenders will determine the application of the mandatory flood insurance purchase requirements, and insurance agents will determine actuarial flood insurance rates.

Affected Public: State, Local and Tribal Government and Business or Other for-Profit Institutes.

Number of Respondents: 5,291.

Number of Responses: 5,291.

Estimated Total Annual Burden Hours: 16,107.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $1,108,050. The cost to developers for engineer's services include scoping, surveying cross-sections, developing hydrologic and hydraulic analysis, and preparing work maps and reports documenting the engineering analysis and results is estimated to be $22,010,000. The cost to the Federal Government is $24,559.06.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper

performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: May 2, 2017.

William H. Holzerland,

Senior Director for Information Management, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–09335 Filed 5–8–17; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0013; OMB No. 1660–0072]

Agency Information Collection Activities: Proposed Collection; Comment Request; Mitigation Grant Programs/e-Grants

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information necessary to implement grants for the Flood Mitigation Assistance (FMA) program and the Pre-Disaster Mitigation (PDM) program.

DATES: Comments must be submitted on or before July 10, 2017.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2017–0013. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennie Orenstein, Branch Chief, HMA Division—Grants Policy, (202) 212–4071. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The FMA program is authorized by Section 1366 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4104c. The FMA program, under 44 CFR part 79, provides funding for measures taken to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insured under the National Flood Insurance Program. The Biggert-Waters Flood Insurance Reform Act of 2012 (Pub. L. 112–141) eliminated the Repetitive Flood Claims (RFC) and Severe Repetitive Loss (SRL) programs, and made significant changes to the FMA program by consolidating the former RFC and SRL programs into FMA. Cost-share requirements were changed to allow more Federal funds for properties with repetitive flood claims.

The PDM program is authorized by Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133, as amended by Section 102 of the Disaster Mitigation Act of 2000, Public Law 106–390, 114 Stat. 1553. It provides grants for cost-effective mitigation actions prior to a disaster event to reduce overall risks to the population and structures, while also reducing reliance on funding from actual disaster declarations.

In accordance with OMB Circular A–102, FEMA requires that all parties interested in receiving FEMA mitigation grants submit an application package for grant assistance. Applications and subapplications for the PDM and FMA programs are submitted via the e-Grants system. The e-Grants system was developed and updated to meet the intent of the e-Government initiative, authorized by Public Law 106–107. This initiative required that all government agencies both streamline grant application processes and provide for the means to electronically create, review, and submit a grant application via the Internet. Title 2 CFR 200.335, promulgated in 2013, encourages Federal awarding agencies and non-Federal entities to, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper.

FEMA is proposing to add a new form to this collection to better provide customer-centric clarity and uniformity in the way FEMA collects information on the progress of FMA/PDM-funded hazard mitigation projects. The new ''Non-Disaster Quarterly Progress Report'' form will replace the obsolete SF–425. Title 2 CFR 200.328 authorizes the collection of information on the progress of activities conducted under Federal awards.

Collection of Information

Title: Mitigation Grant Programs/e-Grants.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0072.

FEMA Forms: A FEMA Form number for the new Non-Disaster Quarterly Progress Report form is currently pending.

Abstract: FEMA's Flood Mitigation Assistance and Pre-Disaster Mitigation programs utilize an automated grant application and management system called e-Grants. These grant programs provide funding for the purpose of reducing or eliminating the risks to life and property from hazards. The e-Grants system includes all of the application information needed to apply for funding under these grant programs.

Affected Public: State, local or Tribal government.

Number of Respondents: 56.

Number of Responses: 4,200.

Estimated Total Annual Burden Hours: 18,088.

Estimated Cost: The estimated annual cost to respondents is $893,366. The estimated annual cost to the Federal government is $6,598,456.16. There are no annual recordkeeping, capital, start-up, or operation and maintenance costs to respondents associated with this collection of information.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

William H. Holzerland,

Senior Director for Information Management, Office of the Chief Administrative Officer Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–09359 Filed 5–8–17; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2017–0021]

Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee Management; notice of open federal advisory committee meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet via teleconference on Thursday, June 8, 2017. The meeting will be an open session.

DATES: The HSSTAC teleconference meeting will take place Thursday, June 8, 2017 from 2:00 p.m. to 3:30 p.m. The meeting may close early if the committee has completed its business.

ADDRESSES: Members of the public may participate by teleconference but you must register. Please see the ''REGISTRATION'' section below.

FOR FURTHER INFORMATION CONTACT: Michel Kareis, HSSTAC Designated Federal Official, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205, 202–254–8778 (Office), 202–254–6176 (Fax) *HSSTAC@hq.dhs.gov* (Email).

SUPPLEMENTARY INFORMATION:

I. Background

Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. appendix (Pub. L. 92–463). The committee addresses areas of interest and importance to the Under Secretary for Science and Technology (S&T), such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other Federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

II. Registration

To pre-register for the teleconference please send an email to: *HSSTAC@hq.dhs.gov* with the following subject line: RSVP to HSSTAC meeting. The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending. You must RSVP by June 7, 2017.

For information on services for individuals with disabilities or to request special assistance at the meeting, please contact Michel Kareis as soon as possible. Her contact information is listed above in the **FOR FURTHER INFORMATION CONTACT** section.

III. Public Comment

At the end of the open session, there will be a period for oral statements. Please note that the comments period may end before the time indicated, following the last call for oral statements. To register as a speaker, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the ''Agenda'' below. You are free to submit comments at any time, including orally at the meeting, but if you want committee members to review your comment before the meeting, written comments must be received by June 1, 2017. Please include the docket number (DHS–2017–0021) and submit via *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: hsstac@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–254–6176.
- *Mail:* Michel Kareis, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read the background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and enter the docket number into the search function: DHS–2017–0021.

Agenda: The session will begin with a discussion on the technical papers produced by the Quadrennial Homeland Security Review (QHSR) 2018 Subcommittee and follow on tasking. The committee will be voting on approval of the report created by the Subcommittee on Internet of Things (IOT). The Commercialization Subcommittee chair will update the committee on its report and recommendations. The Social Media Working Group for Emergency Services and Disaster Management (SMWG) will provide an update on the status of their activities and the FACA committee designation followed by a discussion on DHS S&T updates.

A public comment period will be held at the end of the open session.

Dated: May 3, 2017.

Michel Kareis,

DHS Science and Technology Directorate, Research and Development Partnerships, Interagency Office.

[FR Doc. 2017–09394 Filed 5–8–17; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63644000 DR2000000.CH7000 178D0102R2]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require the Office of Natural Resources Revenue (ONRR) to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The

regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. Consistent with these requirements, this notice provides major portion prices for the 12 months of calendar year 2015.

DATES: The due date to pay additional royalties based on the major portion prices is July 31, 2017.

FOR FURTHER INFORMATION CONTACT: Michael Curry, Manager, Denver B, Western Audit & Compliance, ONRR, at (303) 231–3741, fax to (303) 231–3455, or email to *Michael.Curry@onrr.gov;* or John Davis, Denver B, Team 3, Western Audit & Compliance, ONRR, at (303) 231–3433, fax to (303) 231–3455, or email to *John.Davis@onrr.gov.* Mailing address: Office of Natural Resources Revenue, Western Audit & Compliance, Denver B, P.O. Box 25165, MS 62520B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, ONRR's predecessor, the Minerals Management Service, published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases'' effective January 1, 2000 (64 FR 43506). The gas valuation regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, as well as the due date for additional royalty payments. *See* 30 CFR 1206.174(a)(4)(ii). If you owe additional royalties based on a published major portion price, you must submit to ONRR by the due date, an amended form ONRR–2014, Report of Sales and Royalty Remittance. If you do not pay the additional royalties by the due date, ONRR will bill you late payment interest under 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives your payment and an amended form ONRR–2014. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is the end of the month following 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBtu) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan 2015	Feb 2015	Mar 2015	Apr 2015
Blackfeet Reservation	1.88	1.78	1.70	1.47
Fort Belknap Reservation	4.54	4.44	4.45	4.14
Fort Berthold Reservation	3.04	2.65	2.94	2.24
Fort Peck Reservation	2.33	2.53	2.43	1.86
Navajo Allotted Leases in the Navajo Reservation	3.03	2.72	2.62	2.36
Turtle Mountain Reservation	2.39	2.72	2.87	2.17
ONRR-designated areas	**May 2015**	**Jun 2015**	**Jul 2015**	**Aug 2015**
Blackfeet Reservation	1.90	1.67	1.80	1.82
Fort Belknap Reservation	4.31	4.44	4.53	4.60
Fort Berthold Reservation	2.12	2.33	2.35	2.39
Fort Peck Reservation	1.73	1.99	1.66	1.58
Navajo Allotted Leases in the Navajo Reservation	2.39	2.61	2.67	2.73
Turtle Mountain Reservation	2.16	2.37	2.35	2.43
ONRR-designated areas	**Sep 2015**	**Oct 2015**	**Nov 2015**	**Dec 2015**
Blackfeet Reservation	1.76	1.57	1.49	1.26
Fort Belknap Reservation	4.41	4.35	4.18	4.19
Fort Berthold Reservation	2.20	2.22	1.92	1.88
Fort Peck Reservation	1.80	1.98	1.56	1.43
Navajo Allotted Leases in the Navajo Reservation	2.53	2.36	2.01	2.16
Turtle Mountain Reservation	2.24	2.26	1.95	1.94

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the ONRR Web site at *http://www.onrr.gov/ReportPay/PDFDocs/991201.pdf.*

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2017–09326 Filed 5–8–17; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–227]

Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing.

SUMMARY: The public hearing in this investigation scheduled for May 11, 2017, has been cancelled. The two interested parties that filed requests to appear at the hearing have withdrawn their requests to appear.

DATES:

May 18, 2017: Deadline for filing all written submissions.

September 29, 2017: Transmittal of Commission report to Congress and the President.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public file for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project Leader Justino De La Cruz (202–

205–3252 or *Justino.DeLaCruz@usitc.gov*) or Deputy Project Leader Heather Wickramarachi (202–205–2699 or *Heather.Wickramarachi@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site at *https://www.usitc.gov.* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Section 215(a)(1) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)(1)) requires that the Commission submit biennial reports to the Congress and the President regarding the economic impact of the Act on U.S. industries and consumers, and on the economy of the beneficiary countries. Section 215(b)(1) requires that the reports include, but not be limited to, an assessment regarding:

(A) The actual effect, during the period covered by the report, of [CBERA] on the United States economy generally, as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

The report will cover trade with the 17 beneficiary countries: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Curaçao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

Notice of institution of the investigation was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The Commission plans to transmit the 23rd report, covering calendar years 2015 and 2016, by September 29, 2017.

By order of the Commission.

Issued: May 3, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09300 Filed 5–8–17; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors will meet telephonically on Tuesday, May 23, 2017. Immediately following the Board of Directors telephonic meeting, the Operations and Regulations Committee will hold a telephonic meeting. The Board meeting will commence at 2:00 p.m., EDT, and the meetings will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETINGS: Open.

MATTERS TO BE CONSIDERED:

Board of Directors

1. Approval of agenda.
2. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of October 1, 2016 through March 30, 2017.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

Operations and Regulations Committee—*briefing materials will be posted at http://www.lsc.gov/about-lsc/board/board-meetings.*

1. Approval of agenda.
2. Consider Rulemaking for 45 CFR part 1630 and 1631—Costs and Property.
   - Ron Flagg, General Counsel and Vice President for Legal Affairs.
   - Stefanie Davis, Assistant General Counsel.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: May 4, 2017.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2017–09427 Filed 5–5–17; 11:15 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2017–5]

Pilot Program for Bulk Submission of Claims to Copyright

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The U.S. Copyright Office is announcing a pilot program that will allow for the bulk submission of claims to copyright in certain limited types of literary works. Specifically, at this time, the pilot program is limited to claims to single literary works that have a single author, where all content that appears in the work was created and is owned solely by that single author. Applicants that participate in the pilot will be required to provide author, title, and

other pertinent information for each work they submit. And they will be required to upload a copy of each work and pay the appropriate filing fee. But they will be able to bypass the Office's online interface and transmit their claims directly into the electronic registration system, instead of filing them on an individual basis. To participate in the pilot, applicants would have to comply with certain technical requirements, which are discussed below. The Office is offering this pilot as part of its continuing effort to increase the efficiency of the registration system for both applicants and the Office alike.

ADDRESSES: Entities interested in participating in the pilot program should contact the Copyright Office by submitting their contact information, as well as a description of the type of works sought to be registered and anticipated volume, in the form located at *https://www.copyright.gov/rulemaking/bulk-submission*. The Copyright Office will contact interested parties after receiving this information.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at *sdam@loc.gov* or by telephone at 202–707–8350, or Robert J. Kasunic, Associate Register and Director of Registration Policy and Practice by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION: In 2013, the U.S. Copyright Office began to identify and evaluate potential improvements and technical enhancements to the information technology platforms that support its electronic registration system. As part of this effort, the Office sought public comment on how stakeholders use the Office's online system, known as ''eCO,'' and whether the system meets or fails to meet user expectations. The Office also sought input on the types of online services that stakeholders would like to see in the future. *See* 78 FR 17722 (Mar. 22, 2013).

The Office received input from various stakeholders, including copyright owners, users of copyright records, technical experts, public interest organizations, professional associations, and small businesses. One recommendation that the Office frequently heard was the need for bulk data transfer between interested parties and the Office. Stakeholders predicted that ''system-to-system'' or ''business-to-business'' transfers would allow applicants to submit large quantities of electronic material and associated application data to the Office. They encouraged the Office to take an active role in facilitating this type of data exchange by adopting standards-based protocols, such as ebMS, SOAP, and AS4. 78 FR at 17722, 17723.

In February 2015, the Chief Information Officer for the Copyright Office issued a report that offered several recommendations for creating a better user interface and a better public record. *See* U.S. Copyright Office, Office of the Chief Information Officer, Report and Recommendations of the Technical Upgrades Special Project Team (Feb. 2015), *available at http://copyright.gov/docs/technical_upgrades/usco-technicalupgrades.pdf* (hereinafter ''Technical Upgrades Report''). With respect to the electronic registration system, the report recommended that the Office establish a short-term pilot, using the Office's existing registration system, allowing for the bulk submission of copyright claims from select parties, while maintaining the long-term goal of eventually allowing ''open and easy bulk submission'' from any interested party in a future registration system. *Id.* at 10, 72. The report predicted that bulk submission would reduce the amount of manual labor involved in submitting claims, and improve the quality of the data that the Office receives. The report encouraged the Office to initiate a pilot ''sooner rather than later,'' but acknowledged that ''such a critical initiative should not be undertaken without proper planning.'' *Id.* at 69–70.

The pilot program described in this Notice of Inquiry represents a first step in implementing this recommendation. It also represents a step towards the Office's ultimate goal of developing ''a robust and flexible technology enterprise that is dedicated to the current and future needs of a modern copyright agency.'' U.S. Copyright Office, Strategic Plan 2016–2020: Positioning the United States Copyright Office for the Future, at 35 (Dec. 1, 2015), *available at http://www.copyright.gov/reports/strategic-plan/sp-2016–2020.html*.

This pilot program will be very limited in scope. It will be available only for claims to single literary works that have a single author, where all content that appears in the work was created and is owned solely by that single author.

Works Eligible for Bulk Submission

Applicants can register most types of works through the eCO system.[1] But they must file their claims through the Office's Web site, and each claim must be submitted on an individual basis. Many stakeholders complain that this system is cumbersome and difficult to use. Technical Upgrades Report at 18; 78 FR at 17723.

Applicants that have been accepted into the pilot program will be able to bypass the Office's Web site and the eCO interface. Instead, they will transmit their claims directly into the electronic registration system through a separate portal. And they will be able to submit multiple batches of claims, instead of filing them one by one.

The pilot is intended for applicants that routinely submit large numbers of claims, either on their own behalf or on behalf of other parties. As with any other claim, applicants will be required to provide the information called for in the application, including the author, title, and other pertinent details about each work. But they will be able to send this information in a single transmission instead of preparing separate submissions for each work. Applicants will be required to pay the appropriate filing fee for each claim, but they will be able to pay these fees with a single deduction from their deposit account instead of making separate payments. Finally, applicants will be required to upload a complete electronic copy of each work. But they will be able to bundle these copies together and send them in a single package, instead of uploading each copy individually. Once these materials have been received, the electronic registration system will match each electronic copy with the corresponding application information for that work.

To be clear, the Office is not creating a new group registration option. The pilot is simply intended to facilitate the submission of large numbers of individual claims that would otherwise be submitted one by one. When the Office receives a bulk submission it will examine each work on an individual basis to determine if it meets the eligibility requirements established for the pilot, and if the other formal and legal requirements have been met. If so, the Office will issue a separate certificate of registration for each work.

As noted above, applicants may be eligible for the bulk submission option only if their claims satisfy certain requirements. Specifically, each claim must be limited to one literary work. Each work must be created by one

[1] As the Office noted in a recent rulemaking, applicants currently must file a paper application to seek a supplementary registration, a renewal registration, or a basic registration for a mask work, a vessel design, a foreign work restored to copyright protection under the Uruguay Round Agreements Act, and certain types of databases. *See* 81 FR 86656, 86657–58 (Dec. 1, 2016).

individual, all the content that appears in the work must be created by that individual, and that individual must be the sole owner of all rights in the work. In this respect, the pilot program will mirror the eligibility requirements that apply when a literary work is submitted with the Single Application. Likewise, the filing fee for claims submitted through the pilot will match the fee that currently applies to the Single Application, namely $35 for each work. The deposit for each work must be uploaded as one PDF file.

If the Office determines that a particular work does not satisfy these eligibility requirements, it will refuse to register the claim. In particular, works made for hire will not be eligible for the pilot. A work created by two or more individuals will not be eligible. A work will not be eligible if the deposit contains material created by two or more authors (even if the applicant only intends to register material created by one of those individuals). For the same reason, a derivative work will not be eligible if it is based on a preexisting work by a different author. A work created by one individual will not be eligible if the author transferred his or her rights to another party or if the work is co-owned by two or more parties. Claims involving collective works, an unpublished collection, a unit or publication, a Web site, a database, or other multiple works also will not be eligible for the pilot.

The Office is limiting the pilot to literary works at this time, because they account for the largest number of claims submitted through the eCO system in any given year. For example, in Fiscal Year 2016, the Office received more than 180,000 literary claims, which represent roughly 36% of the electronic claims submitted during that period. At the same time, the Office must balance the administrative burden that bulk submission may impose on the Office. The Office decided to limit the pilot to works that satisfy the eligibility requirements for the Single Application in part because these claims tend to be less complex than claims involving multiple works, multiple authors, and/or multiple owners. If the pilot is successful, the Office may consider expanding this option to include other types of works.

Participation in the Pilot Program

This Notice provides a general overview of how the pilot program is expected to work. Participants will be allowed to join the pilot only if they cooperate with and obtain approval from the Office's technology staff during each phase. The Office may also limit the total number of participants based on its available resources and the volume of claims that each party plans to submit.

Briefly stated, the Office will create a separate portal into the eCO system for each participant. In addition, the Office will provide participants with an XML (extensive markup language) schema that identifies the type of data that must be included in each submission. The schema will call for a unique tracking number that will be assigned to each claim. It will contain a field for the deposit account that will be used to pay the filing fee for each claim. And it will contain data fields that match the corresponding fields in the Single Application for literary works. These fields include the type of work; title of work; completion date; publication status; name of author, claimant, and correspondent; and the name of the person who certified the application.[2]

Each participant will develop its own internal systems for collecting this data. In addition, each participant will create a secure gateway—in close consultation with the Office's technology staff—that will be used to transmit this data to the Office. Participants will be required to conduct extensive testing to confirm that their gateway is compatible with the eCO system before they will be allowed to use the bulk submission option.

Once it has been tested and approved, the gateway will be attached to the portal and will interact directly with the eCO system. Briefly stated, participants will transmit streams of data through the gateway in an XML format using the HTTPS secure transport protocol. Participants will use the HTTP ''POST'' method to submit an electronic copy of each work in a PDF format. The Office does not plan to limit the number of claims that may be included within each submission, but each batch must include a header that identifies the total number of claims contained therein.

Once the XML stream and the electronic copies have been sent through the gateway, the participant will receive an email notification acknowledging the receipt of the transmission. Before the transmission is entered into the eCO system, the Office will scan it for potential security issues, such as the presence of malicious code. Next, the transmission will be scanned to determine if (i) there is a sufficient amount of money in the participant's deposit account to cover the filing fees, (ii) a copy of each work has been submitted, and (iii) the electronic copies can be linked to the corresponding data file for each work. If not, the system will reject the entire batch and send an email notification to the participant. Finally, the system will scan each transmission to determine if any information appears to be missing from the claims, such as the author or title of a particular work. If so, the system will send an email notification to the participant regarding that claim. In such cases, the participant will need to correct the issue and resubmit the claim in another bulk submission.[3]

If the transmission is accepted, the XML streams will auto-populate the corresponding fields within the electronic registration system. The tracking number for each work will be used to connect the electronic copies with the corresponding data file for that work. The eCO system will assign a service request number to each claim, and eventually they will be distributed to an examiner—just like any other claim that is submitted through the Office's Web site. If the claims are approved, the Office will send a certificate of registration to the person named in the correspondent field.

Parties that are interested in participating in this pilot program should contact the Copyright Office using the contact information in the **ADDRESSES** section above.

Dated: May 3, 2017.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2017–09317 Filed 5–8–17; 8:45 am]

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[2] The schema also will include optional fields for limiting the claim, providing rights and permissions information, and requesting special handling.

[3] Alternatively, the participant could file a separate application for that claim by submitting an application deposit and filing fee through the Office's Web site.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Submission for OMB Review; Comment Request

SUMMARY: The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, will submit the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35): Application for International Indemnification. Copies of this ICR, with applicable supporting

documentation, may be obtained at *www.reginfo.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202/395–4718). Copies of any comments should be provided to Patricia Loiko (National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506). To be assured of consideration, comments should be submitted to OMB within thirty days of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
—Enhance the quality, utility and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts (NEA) requests the review of its application guidelines. This entry is issued by the NEA and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Application for International Indemnification.

OMB Number: 3135–0094.

Frequency: Renewed every three years.

Affected Public: Non-profit, tax exempt organizations, and governmental units.

Number of Respondents: 40 per year.

Estimated Time per Respondent: 45 hours.

Estimate Cost per Respondent: $2,097.

Total Burden Hours: 1800.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $121,200.

Description: This application form is used by non-profit, tax-exempt organizations (primarily museums), and governmental units to apply to the Federal Council on the Arts and the Humanities (through the NEA) for indemnification of eligible works of art and artifacts, borrowed from lenders in the United States for exhibition in the United States. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR 1160.4.

Dated: May 4, 2017.

Kathy Daum,

Director, Administrative Services Office, National Endowment for the Arts.

[FR Doc. 2017–09333 Filed 5–8–17; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on APR1400; Notice of Meeting

The ACRS Subcommittee on APR1400 will hold a meeting May 18–19, 2017, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Thursday, May 18, 2017—8:30 a.m. until 5:00 p.m.; Friday, May 19, 2017—8:30 a.m. until 5:00 p.m.

The Subcommittee will review the APR1400 DCD Review—Chapter 9, ''Auxiliary Systems'' and Chapter 15, ''Transient and Accident Analyses.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and Korea Hydro & Nuclear Power Company regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 3, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–09362 Filed 5–8–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0112]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from April 11 to April 24, 2017. The last biweekly notice was published on April 25, 2017.

DATES: Comments must be filed by June 8, 2017. A request for a hearing must be filed by July 10, 2017.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0112. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: T–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0112, facility name, unit number(s), plant docket number, application date, and subject 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 Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0112.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0112, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be

affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 10, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing

system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on obtaining information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 19, 2016. A publicly available version is in Agencywide Documents Access and Management System (ADAMS) under Accession No. ML16363A349.

Description of amendment request: The amendments would modify Technical Specification (TS) 5.5.2, ''Containment Leakage Rate Testing Program,'' by replacing the reference to Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' with a reference to Nuclear Energy Institute (NEI) Topical Report NEI 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J,'' dated July 2012, and the conditions and limitations specified in NEI 94–01, Revision 2–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J,'' dated October 2008, as the implementation documents used by McGuire Nuclear Station, Units 1 and 2, to implement the performance-based leakage testing program in accordance with Option B of 10 CFR part 50, Appendix J. The proposed change would also delete the listing of one-time exceptions previously granted to Integrated Leak Rate Test (ILRT) test frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the Technical Specifications (TS) involves the extension of the McGuire Nuclear Station (MNS) Type A containment integrated leak rate test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. The current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a

performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions.

The proposed extension does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. The containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. The change in dose risk for changing the Type A test frequency from three-per-ten years to once-per-fifteen years, measured, as an increase to the total integrated plant risk for those accident sequences influenced by Type A testing, is 0.032 person-rem/year. [Electric Power Research Institute (EPRI)] Report No. 1009325, Revision 2–A states that a very small population dose is defined as an increase of ≤ 1.0 person-rem per year, or ≤1% of the total population dose, whichever is less restrictive for the risk impact assessment of the extended ILRT intervals.

Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

As documented in NUREG–1493, Type Band C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The MNS Type A test history supports this conclusion.

The integrity of the containment is subject to, two types of failure mechanisms that can be categorized as: (1) Activity based, and; (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with [American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code,] Section XI, the Maintenance Rule, and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test.

Based on the above, the proposed extensions do not significantly increase the consequences of an accident previously evaluated.

The proposed amendment also deletes an exception previously granted to allow one-time extensions of the Unit 1 and Unit 2 ILRT test frequency for MNS. This exception was for activities that have already taken place; therefore, their deletion is solely an administrative action that has no effect on any component and no impact on how the units are operated.

Therefore, the proposed change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of the MNS Type A containment integrated leak rate test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. The current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

The proposed amendment also deletes an exception previously granted to allow one-time extensions of the Unit 1 and Unit 2 ILRT test frequency for MNS. This exception was for activities that will be superseded by this activity; therefore, their deletion is solely an administrative action that does not result in any change in how the units are operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed amendment to TS 5.5.2 involves the extension of the MNS Type A containment integrated leak rate test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. The current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves only the extension of the interval between Type A containment leak rate tests, and Type C tests for MNS. The proposed surveillance interval extension is bounded by the 15-year ILRT interval, and the 75-month Type C test interval currently authorized within NEI 94–01, Revision 3–A. Industry experience supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with [American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code,] Section XI, TS and the Maintenance Rule serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A, and Type C test intervals.

The proposed amendment also deletes an exception previously granted to allow one-time extensions of the Unit 1 and Unit 2 ILRT test frequency for MNS. This exception was for activities that have already taken place; therefore, their deletion is solely an administrative action and does not change how the units are operated and maintained. Thus, there is no reduction in any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC,

550 South Tryon Street—DEC45A, Charlotte, NC 28202–1802.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power

Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: March 28, 2017. A publicly-available version is in ADAMS under Accession No. ML17087A028.

Description of amendment request: The amendments would revise the technical specifications (TSs) based on Technical Specification Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules'' (ADAMS Accession No. ML16062A271). The changes would revise and clarify the TS usage rules for completion times, limiting conditions for operation (LCOs), and surveillance requirements (SRs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to [TS] Section 1.3 and LCO 3.0.4 have no effect on the requirement for systems to be Operable and have no effect on the application of TS actions. The proposed change to SR 3.0.3 (or equivalent) states that the allowance may only be used when there is a reasonable expectation the surveillance will be met when performed. Since the proposed changes do not significantly affect system Operability, the proposed changes will have no significant effect on the initiating events for accidents previously evaluated and will have no significant effect on the ability of the systems to mitigate accidents previously evaluated.

Therefore, it is concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the TS usage rules do not affect the design or function of any plant systems. The proposed changes do not change the Operability requirements for plant systems or the actions taken when plant systems are not operable.

Therefore, it is concluded that the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes clarify the application of [TS] Section 1.3 and LCO 3.0.4 and do not result in changes in plant operation. SR 3.0.3 (or equivalent) is revised to allow application of SR 3.0.3 when an SR has not been previously performed if there is reasonable expectation that the SR will be met when performed. This expands the use of SR 3.0.3 while ensuring the affected system is capable of performing its safety function. As a result, plant safety is either improved or unaffected.

Therefore, it is concluded that the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: March 24, 2017. A publicly-available version is in ADAMS under Accession No. ML17083A083.

Description of amendment request: The proposed amendment would revise the emergency plan (E-Plan) for MNGP. The proposed revisions to the E-Plan are discussed in Section 2.1, ''Proposed Changes,'' of the March 24, 2017, letter and include extending staff augmentation times for Emergency Response Organization (ERO) response functions as well as other changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed increase in staff augmentation times has no effect on normal plant operation or on any accident initiator or precursors and does not impact the function of plant structures, systems, or components (SSCs).

The proposed change does not alter or prevent the ability of the on-shift ERO to perform their intended functions to mitigate the consequences of an accident or event.

The ability of the ERO to respond adequately to radiological emergencies has been demonstrated as acceptable through a staffing analysis as required by 10 CFR 50, Appendix E, Section IV.A.9.

Therefore, the proposed E-Plan changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not impact any accident analysis. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change does not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed change increases the staff augmentation response times in the E-Plan, which are demonstrated as acceptable through a functional analysis as required by 10 CFR 50, Appendix E, Section IV.A.9. The proposed change does not alter or prevent the ability of the ERO to perform their intended functions to mitigate the consequences of an accident or event.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of

radiation dose to the public. The proposed change is associated with the E-Plan staffing and does not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed change does not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed change. Safety analysis acceptance criteria are not affected by this proposed change. The proposed revisions to the E-Plan continue to provide the necessary response staff with the proposed change.

A staffing analysis and a functional analysis were performed for the proposed change focusing on the timeliness of performing major tasks for the functional areas of E-Plan. The analysis concluded that an extension in staff augmentation times would not significantly affect the ability to perform the required E-Plan tasks. Therefore, the proposed change is determined to not adversely affect the ability to meet 10 CFR 50.54(q)(2), the requirements of 10 CFR 50 Appendix E, and the emergency planning standards as described in 10 CFR 50.47 (b).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: David J. Wrona.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 27, 2017. A publicly-available version is in ADAMS under Accession No. ML17086A071.

Description of amendment request: The amendment would revise the Hope Creek Generating Station Technical Specifications by adopting Technical Specifications Task Force (TSTF) Change Traveler TSTF–535, Revision 0, ''Revise Shutdown Margin Definition to Address Advanced Fuel Designs'' (ADAMS Accession No. ML112200436). Specifically, the proposed amendment would modify the Technical Specification definition of ''Shutdown Margin'' (SDM) to require calculation of the SDM at a reactor moderator temperature of 68 degrees Fahrenheit or a higher temperature that represents the most reactive state throughout the operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. SDM is not an initiator of any accident previously evaluated. Accordingly, the proposed change to the definition of SDM has no effect on the probability of any accident previously evaluated. SDM is an assumption in the analysis of some previously evaluated accidents and inadequate SDM could lead to an increase in consequences of those accidents. However, the proposed change revises the SDM definition to ensure that the correct SDM is determined for all fuel types at all times during the fuel cycle. As a result, the proposed change does not adversely affect the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The change does not alter assumptions made in the safety analysis regarding SDM.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the definition of SDM. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change ensures that the SDM assumed in determining safety limits, limiting safety system settings or limiting conditions for operation is correct for all BWR [boiling-water reactor] fuel types at all times during the fuel cycle.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: James G. Danna.

South Carolina Electric & Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: March 30, 2017. A publicly-available version is in ADAMS under Accession No. ML17089A687.

Description of amendment request: The requested amendment proposes changes to combined license (COL) Appendix C (and plant-specific Tier 1) Table 3.3–3, which identifies Class 1E divisional cables in various Auxiliary Building fire areas, and involves changes to related Tier 2 information in the Updated Final Safety Analysis Report (UFSAR). The proposed activity revises Table 3.3–3 to add a second note, Note 2, identifying that Class 1E Protection and Safety Monitoring System (PMS) interdivisional fiber-optic cables are terminated in the identified Auxiliary Building fire areas, in addition to the cable divisions currently listed for these areas. ''Interdivisional'' cables are defined as cables that interconnect PMS divisions, including Division A, B, C, and D cables.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes to COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A do not involve any accidents which are previously evaluated. The interdivisional cables provide signals associated with some safe shutdown functions in accordance with UFSAR Subsection 7.4.1.1, which describes safe shutdown functions using safety-related systems. Therefore, these cables are required for safe shutdown. Accident analyses as described in UFSAR Ch. 15 are not changed as fire-related events in the Auxiliary Building are evaluated separately in UFSAR Appendix 9A for plant safe shutdown. A concurrent single active component failure independent of a fire is not assumed in this evaluation. Voting logic for PMS control functions is not adversely affected as the fiber-optic cables associated with these PMS cabinets in the specified fire areas function using two-out-of-four (2oo4), 2oo3, or 1oo2 logic. Redundant cable divisions which support PMS functions are routed separately in other fire areas and will not be affected in

the event of a fire in one of the identified fire areas. PMS setpoints for reactor trip functions and engineered safeguards features (ESF) functions as described in UFSAR Table 15.0–4a are not changed as functions provided by the PMS cabinets and cables are not adversely affected. PMS is designed to operate with the loss of a single division. Existing accidents previously evaluated are not affected and do not require further analysis. As described in Appendix 9A, in no case does the spurious actuation of equipment prevent safe shutdown. This conclusion remains valid for the proposed changes.

Changes to the safe shutdown evaluation account for interdivisional fiber-optic cables inside of divisional fire areas; however, safe shutdown functions are not changed. Loss of interdivisional fiber-optic cabling is not a reduction in the safety of the plant as the PMS is designed to operate despite the loss of an entire division. Furthermore, fire protection analyses as described in UFSAR Appendix 9A are not adversely affected by this activity as fire protection requirements and equipment are not changed. Conclusions of the associated safe shutdown evaluations are not changed. No safety-related structure, system, component (SSC) or function is adversely affected by this change. The change does not involve an interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the plant-specific UFSAR are not affected. The proposed changes do not involve a change to the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A do not affect any safety-related equipment, and do not add any new interfaces to safety-related SSCs. No system or design function or equipment qualification is affected by these changes as the changes do not modify any SSCs. The existing interdivisional fiber-optic Class 1E cable routing is acceptable because redundant PMS divisions are routed in separate fire areas and can perform safe shutdown functions as required. Redundant cable divisions will not be affected in the event of a fire in one of the identified fire areas. PMS is designed to operate with the loss of a single division. PMS control functions continue being performed using reduced coincidence logic in the event of a fire when a single division is lost.

The changes do not introduce a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment. Safe shutdown functions are not changed as a result of this activity as the loss of an entire divisional room does not disable safe shutdown functions. Separation of cables in the designated Auxiliary Building fire areas is not adversely impacted. A concurrent single active component failure independent of a fire is not assumed in this evaluation as described in UFSAR Appendix 9A. There is no adverse impact to any other fire areas or safe shutdown functions listed in COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A. Changes to the identified cables in the specified fire areas do not affect the operator's ability to safely shut down the plant in the event of a fire. Safe shutdown conclusions identified for each fire area is not changed by these activities as safe shutdown functions are not affected.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A design information, including fire areas 1201 AF 02, 1201 AF 03, 1202 AF 03, and 1202 AF 04, do not adversely affect the safety-related functions of the safe shutdown Class 1E divisions or any function associated with safe shutdown. Interdivisional fiber-optic cabling is not adversely affected and plant control functions are not changed as PMS is designed to operate with a loss of a single division. This activity does not reduce the margin of safety regarding fire protection within the plant. The changes do not affect any other safety-related equipment or fission product barriers. The requested changes will not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes. Redundant cables are terminated in other fire areas. Voting logic for actuation of PMS control functions is not changed and plant responses to potential spurious actuation are not adversely affected by these activities.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: April 6, 2017. A publicly-available version is in ADAMS under Accession No. ML17096A765.

Description of amendment request: The requested amendment proposes changes to combined license (COL) Appendix C (and plant-specific Tier 1) Table 3.3–3, which identifies Class 1E divisional cables in various Auxiliary Building fire areas, and involves changes to related Tier 2 information in the Updated Final Safety Analysis Report (UFSAR). The proposed activity revises Table 3.3–3 to add a second note, Note 2, identifying that Class 1E Protection and Safety Monitoring System (PMS) interdivisional fiber-optic cables are terminated in the identified Auxiliary Building fire areas, in addition to the cable divisions currently listed for these areas. ''Interdivisional'' cables are defined as cables that interconnect PMS divisions, including Division A, B, C, and D cables.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes to COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A do not involve any accidents which are previously evaluated. The interdivisional cables provide signals associated with some safe shutdown functions in accordance with UFSAR Subsection 7.4.1.1, which describes safe shutdown functions using safety-related systems. Therefore, these cables are required for safe shutdown. Accident analyses as described in UFSAR Ch. 15 are not changed as fire-related events in the Auxiliary Building are evaluated separately in UFSAR Appendix 9A for plant safe shutdown. A concurrent single active component failure independent of a fire is not assumed in this evaluation. Voting logic for PMS control functions is not adversely affected as the fiber-optic cables associated with these PMS cabinets in the specified fire areas function using two-out-of-four (2oo4), two-out-of-three (2oo3), or one-out-of-two (1oo2) logic. Redundant cable divisions which support PMS functions are routed separately in other fire areas and will not be affected in the event of a fire in one of the identified fire areas. PMS setpoints for reactor trip functions and engineered safeguards features (ESF) functions as described in UFSAR Table 15.0–

4a are not changed as functions provided by the PMS cabinets and cables are not adversely affected. PMS is designed to operate with the loss of a single division. Existing accidents previously evaluated are not affected and do not require further analysis. As described in Appendix 9A, in no case does the spurious actuation of equipment prevent safe shutdown. This conclusion remains valid for the proposed changes.

Changes to the safe shutdown evaluation account for interdivisional fiber-optic cables inside of divisional fire areas; however, safe shutdown functions are not changed. Loss of interdivisional fiber-optic cabling is not a reduction in the safety of the plant as the PMS is designed to operate despite the loss of an entire division. Furthermore, fire protection analyses as described in UFSAR Appendix 9A are not adversely affected by this activity as fire protection requirements and equipment are not changed. Conclusions of the associated safe shutdown evaluations are not changed. No safety-related structure, system, component (SSC) or function is adversely affected by this change. The change does not involve an interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. The proposed changes do not involve a change to the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A do not affect any safety-related equipment, and do not add any new interfaces to safety-related SSCs. No system or design function or equipment qualification is affected by these changes as the changes do not modify any SSCs. The existing interdivisional fiber-optic Class 1E cable routing is acceptable because redundant PMS divisions are routed in separate fire areas and can perform safe shutdown functions as required. Redundant cable divisions will not be affected in the event of a fire in one of the identified fire areas. PMS is designed to operate with the loss of a single division. PMS control functions continue being performed using reduced coincidence logic in the event of a fire when a single division is lost.

The changes do not introduce a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment. Safe shutdown functions are not changed as a result of this activity as the loss of an entire divisional room does not disable safe shutdown functions. Separation of cables in the designated Auxiliary Building fire areas is not adversely impacted. A concurrent single active component failure independent of a fire is not assumed in this evaluation as described in UFSAR Appendix 9A. There is no adverse impact to any other fire areas or safe shutdown functions listed in COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A. Changes to the identified cables in the specified fire areas do not affect the operator's ability to safely shut down the plant in the event of a fire. Safe shutdown conclusions identified for each fire area are not changed by these activities as safe shutdown functions are not affected.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to COL Appendix C (and plant-specific Tier 1) Table 3.3–3 and UFSAR Appendix 9A design information, including fire areas 1201 AF 02, 1201 AF 03, 1202 AF 03, and 1202 AF 04, do not adversely affect the safety-related functions of the safe shutdown Class 1E divisions or any function associated with safe shutdown. Interdivisional fiber-optic cabling is not adversely affected and plant control functions are not changed as PMS is designed to operate with a loss of a single division. This activity does not reduce the margin of safety regarding fire protection within the plant. The changes do not affect any other safety-related equipment or fission product barriers. The requested changes will not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes. Redundant cables are terminated in other fire areas. Voting logic for actuation of PMS control functions is not changed and plant responses to potential spurious actuation are not adversely affected by these activities.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: March 22, 2017. A publicly-available version is in ADAMS under Accession No. ML17081A484.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7.1, ''Main Steam Safety Valves (MSSVs),'' to resolve a non-conservative moderator temperature coefficient value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the TS for the purpose of correcting a non-conservative value. The proposed TS change does not introduce new equipment or new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed change does not affect normal plant operation. Further, the proposed change does not increase the likelihood of the malfunction of any system, structure, or component, or negatively impact any analyzed accident. This change corrects the TS to ensure all associated accident analyses are adequately considered. The probability of an accident previously evaluated is not affected and there is no significant increase in the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS for the purpose of correcting a non-conservative value. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The proposed change does not alter assumptions made in the safety analysis. Further, the proposed change does not introduce new accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the TS for the purpose of correcting a non-conservative value. The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis assumptions and acceptance criteria are not affected by this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 24, 2017. A publicly-available version is in ADAMS under Accession No. ML17083B097.

Description of amendment request: The amendments would revise Technical Specification 3.7.9, ''Ultimate Heat Sink (UHS),'' to extend the Completion Time to restore one inoperable nuclear service cooling water (NSCW) basin transfer pump from 31 days to 46 days. In addition, a new Condition is added to address two inoperable NSCW basin transfer pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not affect accident initiators or precursors nor adversely alter the design assumptions, conditions, and configuration of the facility. The proposed amendment does not alter any plant equipment or operating practices with respect to such initiators or precursors in a manner that the probability of an accident is increased.

The proposed amendment extends the time one NSCW basin transfer pump is allowed to be inoperable and provides remedial action requirements when two NSCW basin transfer pumps are inoperable. The proposed amendment does not involve a physical change to the NSCW system, nor does it change the safety function of the NSCW system or the equipment supported by the NSCW system. The UHS will remain capable of responding to a design basis event during the period of time both NSCW basin transfer pumps are unavailable. Additionally, an alternate method of NSCW cooling tower basin transfer will be implemented prior to the need for the transfer function during an accident when one or both NSCW basin transfer pumps are inoperable. As a result, the proposed amendment does not alter assumptions relative to the mitigation of an accident or transient event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or difference accident from any accident previously evaluated?

Response: No.

With respect to a new or different kind of accident, there are o [no] proposed design changes to the NSCW system, cooling tower basin transfer system, or UHS; nor are there any changes in the method by which safety related plant structures, systems, and components perform their specified safety functions. The proposed amendment will not affect the normal method of plant operation or revise any operating parameters. No new accident scenarios, transient precursor, failure mechanisms, or limiting single failures will be introduced as a result of this proposed change.

The proposed amendment does not alter the design or performance of the NSCW system, cooling towers, basin transfer system, or UHS. The proposed amendment extends the time one NSCW basin transfer pump is allowed to be inoperable ad provides remedial actions when two NSCW basin transfer pumps are inoperable. The compensatory measures when two NSCW basin transfer pumps are inoperable are consistent with the compensatory measures allowed when one NSCW basin transfer pump is inoperable.

No changes are being proposed to the procedures that operate the plant equipment and the change does not have a detrimental impact on the manner in which plant equipment operates or response to an actuation signal.

Therefore, the proposed change will not create the possibility of a new or different accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The margin of safety is related to the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment. The performance of these fission product barriers will not be affected by the proposed change.

The proposed amendment extends the time one NSCW basin transfer pump is allowed to be inoperable and provides remedial action requirements when two NSCW basin transfer pumps are inoperable. The UHS will remain capable of responding to a design basis event during the extended time one inoperable NSCW basin transfer pump is unavailable and the brief period of time the NSCW basin transfer function is unavailable. An alternate method of NSCW cooling tower basin transfer will be implemented prior to the need for the transfer function during an accident. For these reasons, the NSCW system and the UHS will continue to be capable of transferring the combined heat load of structures, systems, and components important to safety under normal and accident conditions.

Therefore, the margin to the onsite and offsite radiological dose limits are not impacted by the proposed amendment and, thus the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, 40 Iverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Act, and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: February 23, 2017, as supplemented by letter dated March 30, 2017.

Brief description of amendment: The amendment revised the Technical Specification requirements for the high pressure coolant injection system and reactor core isolation cooling system actuation instrumentation.

Date of issuance: April 14, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 206. A publicly-available version is in ADAMS under Accession No. ML17076A027; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–43: The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* March 13, 2017 (82 FR 13512). The supplemental letter dated March 30, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noted, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment and final no significant hazards determination is contained in a Safety Evaluation dated April 14, 2017.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: April 13, 2016, as supplemented by letter dated March 1, 2017.

Brief description of amendments: The amendments revised the Allowable Values (AVs) of Surveillance Requirements (SRs) contained in Technical Specification 3.3.8.2, ''RPS Electric Power Monitoring,'' by amending the Reactor Protection System electric power monitoring assembly AVs for overvoltage and undervoltage contained within SRs 3.3.8.2.2 and 3.3.8.2.3

Date of issuance: April 11, 2017.

Effective date: As of date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 273 and 301. A publicly-available version is in ADAMS under Accession No. ML16343A246; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* June 7, 2016 (81 FR 36613). The supplemental letter dated March 1, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 2017.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield, South Carolina

Date of amendment request: September 15, 2016.

Brief description of amendments: The amendments changed Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station, Units 2 and 3. The amendments changed the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document (DCD) Tier 2* information. Specifically, the changes revised the combined operating licenses and clarify information in WCAP–17179, ''AP1000® Component Interface Module Technical Report,'' which demonstrates design compliance with licensing bases requirements. The WCAP–17179 is incorporated by reference into the UFSAR to provide additional details regarding the component interface module (CIM) system design. The amendments also proposed a change to the CIM internal power supply that will enable proper functioning of the field programmable gate arrays.

Date of issuance: April 12, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 71. A publicly-available version is in ADAMS under Accession No. ML17040A184; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–93 and NPF–94: Amendments revised the UFSAR in the form of departures from the incorporated plant-specific DCD Tier 2* information.

*Date of initial notice in **Federal Register**:* October 25, 2016 (81 FR 73437).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 2017.

No significant hazards consideration comments received: No.

TEX Operations Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2 (CPNPP), Somervell County, Texas

Date of amendment request: April 27, 2016, as supplemented by letter dated June 30, 2016.

Brief description of amendments: The amendments revised the technical specifications (TSs) for CPNPP consistent with Technical Specifications Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing,'' dated October 21, 2015. The changes include deleting the current TS requirements for the Inservice Testing Program, adding a new defined term, ''INSERVICE TESTING PROGRAM,'' to the TSs, and revising other TSs to reference this new defined term instead of the deleted program.

Date of issuance: April 13, 2017.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1—168; Unit 2—168. A publicly-available version is in ADAMS under Accession No. ML17074A494; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* July 19, 2016 (81 FR 46963). The supplemental letter dated June 30, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration

determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 13, 2017.

No significant hazards consideration comments received: No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Act, and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present

evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 10, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html*. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class

mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 4, 2017, as supplemented by letter dated April 8, 2017.

Description of amendment request: The amendment is a one-time change to the licensing basis for the service water cooling tower, which provides the standby seismically qualified ultimate heat sink for Seabrook Station, Unit No. 1, to be removed from service for maintenance on the cooling tower basin with the reactor plant in operational Modes 5 or 6, cold shutdown or refueling, respectively, during the April 2017 refueling outage. During the maintenance period, the normal heat sink provided by the non-seismic tunnel access to the Atlantic Ocean would remain in service.

Date of issuance: April 13, 2017.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented immediately for the period that Seabrook Station, Unit No. 1, is in Modes 5 and 6 during the April 2017 refueling outage.

Amendment No.: 155. A publicly-available version is in ADAMS under Accession No. ML17102A889; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–86: Amendment revised the Facility Operating License licensing basis.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. The *Portsmouth Herald* and *The Boston Globe* on April 10, 2017, and April 11, 2017. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. A public comment was received and addressed in the Safety Evaluation.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated April 13, 2017.

Attorney for licensee: William Blair, Managing Attorney—Nuclear Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: James G. Danna.

Dated at Rockville, Maryland, this 28th day of April 2017.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–09345 Filed 5–8–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0104]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on April 25, 2017, regarding notice of issuance of amendments to facility operating licenses and combined licenses. This action is necessary to correct an administrative error.

DATES: The correction is effective May 9, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0104 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0104. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: V. Sreenivas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2597, email: *V.Sreenivas@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the FR on April 25, 2017 (82 FR 19095), FR Doc. 2017–08115, on page 19108, under Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania, in the third column, paragraph 4, line 11, ''Amendment No.: 186'' is corrected to read ''Amendment No.: 187.''

Dated at Rockville, Maryland, this 27th day of April 2017.

For the Nuclear Regulatory Commission.

V. Sreenivas,

Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–09367 Filed 5–8–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; NRC–2016–0092]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) prepared under the National Environmental Policy Act of 1969 (NEPA) and NRC's regulations. This EA summarizes the results of the NRC staff's environmental review, which evaluates the potential environmental impacts of granting exemptions from NRC regulations in response to a request from STP Nuclear Operating Company (STPNOC, the licensee) for Facility Operating License Nos. NPF–76 and NPF–80, for South Texas Project (STP), Units 1 and 2, respectively, located in Matagorda County, Texas. The regulatory exemptions, if granted, allow STPNOC to change the licensing basis loss-of-coolant accident analysis identified in the Updated Final Safety Analysis Report to use a risk-informed approach to address safety issues discussed in Generic Safety Issue (GSI)–191 and to close Generic Letter (GL) 2004–02.

DATES: May 9, 2017.

ADDRESSES: Please refer to Docket ID NRC–2016–0092 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0092. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room 01–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Lisa Regner, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1906, email: *Lisa.Regner@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The NRC is considering a request to grant certain regulatory exemptions for Facility Operating License Nos. NPF–76 and NPF–80, issued to STPNOC for operation of STP, Units 1 and 2, located in Matagorda County, Texas, in accordance with section 50.12, ''Specific exemptions,'' of title 10 of the *Code of Federal Regulations* (10 CFR), ''Application for amendment of license, construction permit, or early site permit.'' The regulatory exemptions would allow STPNOC to resolve concerns associated with GSI–191, ''Assessment of Debris Accumulation on PWR [Pressurized-Water Reactor] Sump Performance,'' and the associated GL 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors,'' issued on September 13, 2004.

Pursuant to 10 CFR 51.21, ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC has prepared an EA summarizing the findings of its NEPA review of the proposed action. The NRC concluded that the proposed action will have no significant environmental impact.

The NRC published a draft EA on the proposed action for public comment in the **Federal Register** on May 4, 2016 (81 FR 26838) (ADAMS Accession No. ML16032A387). No comments were received.

Background

The NRC established GSI–191 to determine whether the transport and accumulation of debris from a loss-of-coolant accident in the PWR containment structure would impede the operation of the emergency core cooling system (ECCS) or containment spray system (CSS). A loss-of-coolant accident within the containment structure is assumed to be caused by a break in the primary coolant loop piping. Water discharged from the pipe break would collect on the containment structure floor and within the containment emergency sump. During this type of accident, the ECCS and CSS would initially draw cooling water from the refueling water storage tank. However, realigning the ECCS pumps to the containment structure emergency sump would provide long-term cooling of the reactor core. Therefore, successful long-term cooling depends on the ability of the containment structure emergency sump to provide adequate flow to the residual heat removal recirculation pumps for extended periods of time.

One of the concerns addressed by the implementation of GSI–191 is that debris, such as insulation installed on piping and components, within the containment structure could be dislodged by a jet of water and steam from a loss-of-coolant accident. Water, along with debris, would accumulate at the bottom of the containment structure and flow towards the emergency sump pumps. Insulation and other fibrous material could block the emergency sump screens and suction strainers, which in turn could prevent the ability of the containment emergency sump to provide adequate flow to the residual heat removal recirculation pumps (for more information, see NUREG–0897, ''Containment Emergency Sump Performance'').

The NRC issued GL 2004–02 to address this safety concern by requesting PWR licensees, pursuant to 10 CFR 50.54(f), to use an NRC-approved methodology to perform a ''mechanistic evaluation of the potential for the adverse effects of post-accident

debris blockage and operation with debris-laden fluids to impede or prevent the recirculation functions of the ECCS and CSS following all postulated accidents for which the recirculation of these systems is required'' and submit this information to the NRC for evaluation.

Subsequent to the issuance of GL 2004–02, the NRC staff identified another related concern with the potential for debris to bypass the sump strainers (even the new strainers) and enter the reactor core. This safety issue could result in the build-up of material on fuel assemblies and at the core inlet, inhibit heat transfer, and prevent adequate cooling of the reactor core. Since 2004, the NRC and industry have conducted tests to gain more information on this concern. In 2012, the NRC staff developed three options for resolution of GSI–191, which are discussed in SECY–12–0093, ''Closure Options for Generic Safety Issue 191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance,'' dated July 9, 2012.

The three options for demonstrating compliance with 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' and considering the impact of debris on ECCS and CSS recirculation, are summarized as follows.

1. Option 1 allows the use of approved models and test methods.

2. Option 2 allows the industry to implement additional mitigating measures until resolution is completed and take additional time to resolve issues through further industry testing or use of a risk-informed approach. Use of this option has two alternative methods, including Option 2B, chosen by STPNOC, which allows development of a risk-informed approach to quantify the risk associated with this generic issue and submit a request to the NRC for a license amendment.

3. Option 3 allows the industry to separate the regulatory treatment of the sump strainer and in-vessel effects. The ECCS strainers will be evaluated using currently approved models, while in-vessel effects will be addressed using a risk-informed approach.

The STPNOC proposed to use Option 2 to demonstrate compliance with 10 CFR 50.46, and 10 CFR part 50, appendix A, General Design Criterion (GDC) 35, ''Emergency core cooling,'' GDC 38, ''Containment heat removal,'' and GDC 41, ''Containment atmosphere cleanup,'' and to resolve GSI–191 for STP. The licensee proposed to use both a deterministic method, with plant-specific testing, and a risk-informed approach. Because, historically, the NRC staff has not allowed licensees to use a risk-informed approach to show compliance with the requirements of 10 CFR 50.46, and GDCs 35, 38, and 41, STPNOC requested exemptions from 10 CFR 50.46(a)(1) and the aforementioned GDCs, to allow the use of a risk-informed approach to resolve GSI–191. If approved, the proposed action would not authorize any modifications within the containment structure, physical changes to the ECCS, or other modifications to the plant. Rather, the proposed action would only allow the use of an alternate methodology to show compliance with the regulations that require ECCS and CSS function during certain loss-of-coolant accident events.

II. Environmental Assessment

Description of the Proposed Action

The proposed action is to amend Facility Operating License Nos. NPF–76 and NPF–80 for STP, Units 1 and 2, and to grant regulatory exemptions requested by STPNOC. The regulatory exemptions would allow STPNOC to change the licensing basis loss-of-coolant accident analysis identified in the Updated Final Safety Analysis Report to use a risk-informed approach to address safety issues discussed in GSI–191 and to close GL 2004–02. If approved, no physical modifications to the nuclear plant or changes to reactor operations involving the ECCS would be required. The proposed action is in response to the licensee's application dated June 19, 2013, and supplemented by letters dated August 20, 2015, and April 13, 2016.

Need for the Proposed Action

As the holder of Facility Operating License Nos. NPF–76 and NPF–80, STPNOC is expected to address the safety issues discussed in GSI–191 and to close GL 2004–02 with respect to STP, Units 1 and 2. Consistent with SECY–12–0093, STPNOC chose an approach to use a risk-informed methodology. Since the NRC staff's position has long held that only deterministic or bounding calculations be used to show compliance with 10 CFR 50.46, and GDCs 35, 38, and 41, the STPNOC has requested that the NRC grant certain regulatory exemptions for STP, Units 1 and 2.

Special Circumstances

The NRC staff determined that special circumstances under 10 CFR 51.21 exist to prepare an EA for the proposed action because STP is the pilot plant to propose a risk-informed approach to resolve GSI–191 as recognized in Staff Requirement Memorandum SECY 12–0093, ''Closure Options for Generic Safety Issue—191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance,'' dated December 14, 2012. Because this is the first NRC review of the use of a risk-informed, instead of a deterministic, approach to determine that the ECCS and CSS structures, systems, and components will provide adequate cooling for the reactor core and containment during design-basis accidents in accordance with 10 CFR 50.46 and GDCs 35, 38, and 41, the NRC staff considered the issuance of an EA to be a prudent course of action that would further the purposes of NEPA.

Plant Site and Environs

The STP is located on approximately 12,220 acres (4,945 hectares) in rural and sparsely populated Matagorda County, Texas, approximately 70 miles (mi) [110 kilometers (km)] south-southwest of Houston. Nearby communities include Matagorda, approximately 8 mi (13 km) south of the site; the City of Palacios, 11 mi (18 km) west of the site; and Bay City, 13 mi (21 km) north of the site.

The STP power plant consists of two four-loop Westinghouse PWR units. The reactor core of each unit heats water, which is pumped to four steam generators, where the heated water is converted to steam. The steam is then used to turn turbines, which are connected to electrical generators that produce electricity. A simplified drawing of a PWR can be viewed at *http://www.nrc.gov/reactors/pwrs.html.*

The reactor, steam generators, and other components are housed in a concrete and steel containment structure (building). The containment structure is a reinforced concrete cylinder with a concrete slab base and hemispherical dome. A welded steel liner is attached to the inside face of the concrete shell to ensure a high degree of leak tightness. In addition, the 4-foot (1.2-meter)-thick concrete walls of the containment structure serve as a radiation shield. Additional information on the plant structures and systems, as well as the environmental impact statement for license renewal, can be found in NUREG–1437, Supplement 48, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 48 Regarding South Texas Project, Units 1 and 2.''

Environmental Impacts of the Proposed Action

Radiological and non-radiological impacts on the environment that may

result from granting the regulatory exemptions are summarized in the following sections.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents and Solid Waste

The STP uses waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and Environmental Protection Agency radiation safety standards. Granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations that would affect the types and quantities of radioactive material generated during plant operations; therefore, there will be no changes to the plant radioactive waste treatment systems. A detailed description of the STP radioactive waste handling and disposal activities is contained in Chapter 2.1.2 of Supplement 48 to NUREG–1437.

Radioactive Gaseous Effluents

The objectives of the STP gaseous waste management system (GWMS) are to process and control the release of radioactive gaseous effluents into the environment to be within the requirements of 10 CFR 20.1301, ''Dose limits for individual members of the public,'' and to be consistent with the as low as is reasonably achievable (ALARA) dose objectives set forth in appendix I to 10 CFR part 50. The GWMS is designed so that radiation exposure to plant workers is within the dose limits in 10 CFR 20.1201, ''Occupational dose limits for adults.''

Granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations; therefore, there will be no changes to the GWMS. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1301 and the ALARA dose objectives in appendix I to 10 CFR part 50.

Radioactive Liquid Effluents

The function of the STP liquid waste processing system (LWPS) is to collect and process radioactive liquid wastes to reduce radioactivity and chemical concentrations to levels acceptable for discharge to the environment or to recycle the liquids for use in plant systems. The principal objectives of the LWPS are to collect liquid wastes that may contain radioactive material and to maintain sufficient processing capability so that liquid waste may be discharged to the environment below the regulatory limits of 10 CFR 20.1301 and consistent with the ALARA dose objectives in appendix I to 10 CFR part 50. The waste is routed through a monitor that measures the radioactivity and can automatically terminate the release in the event radioactivity exceeds predetermined levels. The liquid waste is discharged into the main cooling reservoir. The entire main cooling reservoir is within the STP site boundary and the public is prohibited from access to the area.

Granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations; therefore, there will be no changes to the LWPS. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1301 and the ALARA dose objectives in appendix I to 10 CFR part 50.

Radioactive Solid Wastes

The function of the STP solid waste processing system (SWPS) is to process, package, and store the solid radioactive wastes generated by nuclear plant operations until they are shipped off site to a vendor for further processing or for permanent disposal at a licensed burial facility, or both. The storage areas have restricted access and shielding to reduce radiation rates to plant workers. The principal objectives of the SWPS are to package and transport the waste in compliance with NRC regulations in 10 CFR part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste,'' and 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and the U.S. Department of Transportation regulations in 49 CFR parts 170 through 179; and to maintain the dose limits of 10 CFR 20.1201, 10 CFR 20.1301, and appendix I to 10 CFR part 50.

Granting the regulatory exemptions will not result in any physical changes to the nuclear plant or reactor operations; therefore, the waste can be handled by the SWPS without modification. The existing equipment and plant procedures that control radioactive solid waste handling will continue to be used to maintain exposures within the dose limits of 10 CFR 20.1201, 10 CFR 20.1301, and 10 CFR part 50, appendix I.

Occupational Radiation Doses

The proposed action of granting the regulatory exemptions will not result in any physical changes being made to the nuclear plant or reactor operations; therefore, there will be no change to any in-plant radiation sources. The licensee's radiation protection program monitors radiation levels throughout the nuclear plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR part 20, subpart C, ''Occupational Dose Limits.'' Granting the regulatory exemptions will not change radiation levels within the nuclear plant and, therefore, will have no increased radiological impact to the workers.

Offsite Radiation Dose

The primary sources of offsite dose to members of the public from the STP are radioactive gaseous and liquid effluents. As discussed previously, there will be no change to the operation of the STP radioactive gaseous and liquid waste management systems or the ability to perform their intended functions. Also, there will be no change to the STP radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with radiation protection standards in 10 CFR 20.1301, 40 CFR 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations,'' and the ALARA dose objectives in appendix I to 10 CFR part 50.

Based on the previous statements, the offsite radiation dose to members of the public would not change and would continue to be within regulatory limits, and, therefore, granting the regulatory exemptions will not change offsite dose levels and, consequently, the health effects of the proposed action will not be significant.

Design-Basis Accidents

Design-basis accidents at STP, Units 1 and 2, are evaluated by both the licensee and the NRC to ensure that the units can withstand the spectrum of postulated accidents without undue hazard to the public health and safety and the protection of the environment.

Separate from its environmental review in this EA, the NRC staff is evaluating the licensee's technical and safety analyses provided in support of the proposed action of granting the exemption requests to ensure that, following the proposed action, the licensee will continue to meet the NRC regulatory requirements for safe operation. The results and conclusion of the NRC staff's safety review will be documented in a publicly available safety evaluation. If the NRC staff concludes in this safety evaluation that taking the proposed action will (1)

provide reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) provide reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) not be inimical to the common defense and security or to the health and safety of the public, then the proposed action will also not have a significant environmental impact. The NRC will not take the proposed action absent such a safety conclusion.

Radiological Cumulative Impacts

The radiological dose limits for protection of the public and plant workers have been developed by the NRC and the Environmental Protection Agency to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are codified in 10 CFR part 20, ''Standards for Protection Against Radiation,'' and 40 CFR part 190.

Cumulative radiation doses are required to be within the limits set forth in the regulations cited in the previous paragraph. Granting the exemptions will not require any physical changes to the plant or plant activities, there will not be changes to in-plant radiation sources, and offsite radiation dose to members of the public will not change. Therefore, the NRC staff concludes that there would not be a significant cumulative radiological impact from the proposed action.

Radiological Impacts Summary

Based on these radiological evaluations, the proposed action of granting the exemptions would not result in any significant radiological impacts. Therefore, if the NRC staff concludes in its separate safety evaluation that taking the proposed action will (1) provide reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) provide reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) not be inimical to the common defense and security or to the health and safety of the public, then the proposed action will not have a significant radiological impact.

Non-Radiological Impacts

No physical modifications to the nuclear plant or changes to reactor operations involving the ECCS would be required if the NRC were to grant the regulatory exemptions. Also, no physical changes would be made to other structures or land use within the STP site. Non-radiological liquid effluents or gaseous emissions would not change and therefore environmental conditions at the STP site also would not change. In addition, granting the regulatory exemptions would not result in changes to the use of resources (*e.g.,* visual, terrestrial, or aquatic) or cause any new environmental impacts (*e.g.,* noise). Further, granting the regulatory exemptions does not change the operation of the reactor, the heat load dissipated to the environment, or the amount of non-radiological waste.

Therefore, there would be no non-radiological environmental impacts to any resource or any irreversible and irretrievable commitments of resources.

Non-Radiological Cumulative Impacts

Since granting the regulatory exemptions would not result in environmental effects, there would be no cumulative impact.

Environmental Impacts of the Alternatives to the Proposed Action

As discussed earlier, licensees have options in responding to GL 2004–02 and demonstrating compliance with 10 CFR 50.46 considering the impacts of debris on the emergency core cooling system. Consistent with these options and as an alternative to the proposed action, the licensee could choose to not pursue exemptions (Options 1 and 3). Depending on the results of its analysis, the licensee would instead remove fibrous insulation to reduce the debris loading and the potential for clogging the containment sumps, and would replace insulation within the reactor containment building. This alternative would involve the physical removal and disposal of significant amounts of insulation from a radiation area within the reactor containment building and replacement with insulation less likely to impact sump performance. This would be considered the ''no action alternative'' in that it would not require exemptions (actions) from the NRC.

Removal of the existing insulation from the containment building would generate radiologically contaminated waste. The STPNOC estimated that 4,620 cubic feet of insulation would be removed and stored onsite until disposal. The old insulation would require special handling and packaging so that it could be safely transported from the STP site. The licensee's existing low-level radioactive and hazardous waste handling and disposal activities would likely be used to process and store this waste material. The old insulation would then be transported to a low-level radioactive or hazardous waste disposal site. Energy (fuel) would be expended to transport the insulation and land would be expended at the disposal site.

The removal of the old insulation and installation of the new insulation would expose workers to radiation. In its application, STPNOC estimates that this would result in an additional collective radiation exposure of 158–176 person-roentgen equivalent man (rem) over its baseline collective radiation exposure. The NRC staff reviewed NUREG–0713, Volume 34, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2012: Forty-Fifth Annual Report,'' and determined that STPNOC's average baseline collective radiation exposure is approximately 90 person-rem. This additional 158–176 person-rem collective exposure would be shared across the entire work force involved with removing and reinstalling insulation.

In SECY–12–0093, the NRC staff attempted to develop a total occupational dose estimate for the work involved in insulation removal and replacement associated with GSI–191. Due to uncertainties in the scope of work required to remove and replace insulation at a specific nuclear plant and other site-specific factors such as source term and hazardous materials, the NRC staff was unable to estimate the total occupational dose associated with this work. However, dose estimates were provided by the Nuclear Energy Institute (NEI) in a letter to the NRC dated March 30, 2012, based on information collected on occupational radiation exposures that have been, or could be, incurred during insulation removal and replacement. In the letter, NEI noted similar difficulties to those experienced by the NRC staff in estimating the potential amount of radiation exposure, but provided a ''per unit'' estimate of between 80 to 525 person-rem. The NRC staff ultimately concluded that the NEI estimates were reasonable given the uncertainties in the scope of work and other nuclear plant site-specific factors such as source term and hazardous materials. Therefore, since STPNOC's estimate of radiation exposure for insulation removal and replacement is within the NEI estimated range, the NRC staff considers STPNOC's estimate of an increase of 158–176 person-rem over the baseline exposure to be reasonable.

As stated in the ''Occupational Radiation Doses'' section of this document, STPNOC's radiation protection program monitors radiation levels throughout the nuclear plant to establish appropriate work controls,

training, temporary shielding, and protective equipment requirements so that worker doses are expected to remain within the dose limits of 10 CFR 20.1201.

In addition, as stated in the ''Offsite Radiation Dose'' section of this document, STPNOC also has a radiation monitoring system and procedures in place to control the release of radioactive effluents in accordance with radiation protection standards in 10 CFR 20.1301, 40 CFR part 190, and the ALARA dose objectives in appendix I to 10 CFR part 50. Therefore, radiation exposure to members of the public would not be significant and would be maintained within the NRC dose criteria in 10 CFR 20.1301, 40 CFR part 190, and the ALARA dose objectives of appendix I to 10 CFR part 50.

Based on this information, impacts to members of the public from removing and replacing insulation within the reactor containment building would not be significant. However, impacts to plant workers and the environment from implementing this alternative would be greater than implementing the proposed action.

Alternative Use of Resources

The proposed action would not involve the use of any different resources (*e.g.,* water, air, land, nuclear fuel) not previously considered in NUREG–1437, Supplement 48.

Agencies and Persons Consulted

In accordance with its stated policy, on May 1, 2017, the NRC staff consulted with the Texas State official, Mr. Robert Free, regarding the final environmental impact of the proposed action. The state official had no comments on the final EA and finding of no significant impact.

III. Finding of No Significant Impact

The NRC is considering STPNOC's requests to amend Facility Operating License Nos. NPF–76 and NPF–80 for STP, Units 1 and 2, and to grant exemptions for STP, Units 1 and 2, from certain requirements of 10 CFR 50.46(a)(1), and 10 CFR part 50, appendix A, GDCs 35, 38, and 41.

This proposed action would not result in changes to radioactive effluents or emissions to nuclear plant workers and members of the public or any changes to radiological and non-radiological impacts to the environment. On the basis of the EA included in Section II of this notice and incorporated by reference in this finding, the NRC staff finds that the proposed action will not have a significant effect on the quality of the human environment. The NRC staff's evaluation considered the information provided in the licensee's application as supplement, and the NRC staff's review of related environmental documents. Section IV below lists the environmental documents related to the proposed action and includes information on the availability of the documents. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The documents identified in the following table are available for public inspection through the NRC's Agencywide Documents Access and Management System (ADAMS) or by using one of the methods discussed in Section I.A, ''Obtaining Information,'' of this document.

Title	Date	ADAMS Accession No.
NUREG–0897, Containment Emergency Sump Performance: Technical Findings Related to Unresolved Safety Issue A–43, Revision 1.	10/1985	ML112440046
NRC Generic Letter 2004–02, Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors.	9/13/2004	ML042360586
NEI letter to NRC, Nuclear Energy Institute, GSI–191 Dose Estimates	03/30/2012	ML12095A319
Commission SECY–12–0093, Closure Options for Generic Safety Issue–191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance.	07/09/2012	ML121320270 (package)
Commission SRM–SECY–12–0093, Staff Requirements—SECY–12–0093—Closure Options for Generic Safety Issue–191, Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance.	12/14/2012	ML12349A378
STPNOC letter to NRC, STP Pilot Submittal and Request for Exemption for a Risk-Informed Approach to Resolve Generic Safety Issue (GSI)–191.	01/31/2013	ML13043A013
NRC letter to STPNOC, South Texas Project, Units 1 and 2—Supplemental Information Needed for Acceptance of Requested Licensing Action Re: Request for Exemption for a Risk-Informed Approach to Resolve Generic Safety Issue 191.	04/01/2013	ML13066A519
STPNOC letter to NRC, Revised STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)–191.	06/19/2013	ML131750250 (package)
STPNOC letter to NRC, Corrections to Information Provided in Revised STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)–191.	10/03/2013	ML13295A222
STPNOC letter to NRC, Submittal of GSI–191 Chemical Effects Test Reports	10/31/2013	ML13323A673 (package)
STPNOC letter to NRC, Supplement 1 to Revised STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)–191.	11/13/2013	ML13323A128 (package)
STPNOC letter to NRC, Supplement 1 to Revised STP Pilot Submittal for a Risk-Informed Approach to Resolving Generic Safety Issue (GSI)–191 to Supersede and Replace the Revised Pilot Submittal.	11/21/2013	ML13338A165
NUREG–1437, Supplement 48, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 48 Regarding South Texas Project, Units 1 and 2: Final Report.	11/2013	ML13322A890
STPNOC letter to NRC, Response to STP–GSI–191 EMCB–RAI–1	12/23/2013	ML14015A312
STPNOC letter to NRC, Response to NRC Request for Reference Document For STP Risk-Informed GSI–191 Application.	12/23/2013	ML14015A311
STPNOC letter to NRC, Response to NRC Accident Dose Branch Request for Additional Information	03/17/2014	ML14086A383 (package)
STPNOC letter to NRC, Response to Request for Additional Information re Use of RELAP5 in Analyses for Risk-Informed GSI–191 Licensing Application.	01/09/2014	ML14029A533
STPNOC letter to NRC, Submittal of CASA Grande Code and Analyses for STP's Risk-Informed GSI–191 Licensing Application.	02/13/2014	ML14052A110 (package, portions redacted)

Title	Date	ADAMS Accession No.
STPNOC letter to NRC, Submittal of GSI–191 Chemical Effects Test Reports	02/27/2014	ML14072A075 (package)
NRC Letter to STPNOC, Request for Additional Information, Round 1	04/15/2014	ML14087A075
NUREG–0713, Volume 34, Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2012: Forty-Fifth Annual Report.	04/2014	ML14126A597
STPNOC letter to NRC, Second Submittal of CASA Grande Source Code for STP's Risk-Informed GSI–191 Licensing Application.	05/15/2014	ML14149A354
STPNOC letter to NRC, First Set of Responses to April, 2014, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application—Revised.	05/22/2014	ML14149A439 (package)
STPNOC letter to NRC, Second Set of Responses to April, 2014, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application.	06/25/2014	ML14178A467 (package)
STPNOC letter to NRC, Third Set of Responses to April, 2014, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application.	07/15/2014	ML14202A045
NRC letter to STPNOC, Request for Additional Information, Round 2	03/03/2015	ML14357A171
STPNOC letter to NRC, Submittal of Updated CASA Grande Input for STP's Risk-Informed GSI–191 Licensing Application.	03/10/2015	ML15072A092
STPNOC letter to NRC, Description of Revised Risk-Informed Methodology and Responses to Round 2 Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application.	03/25/2015	ML15091A440
STPNOC letter to NRC, Supplement 2 to STP Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Address Generic Safety Issue (GSI)–191 and Respond to Generic Letter (GL) 2004–02.	08/20/2015	ML15246A125 (package)
NRC letter to STPNOC, Request for Additional Information, Round 3 (without Risk)	04/11/2016	ML16082A507
NRC letter to STPNOC, Request of Additional Information, Round 3 (Risk)	05/26/2016	ML16125A290
STPNOC letter to NRC, First Set of Responses to April 11, 2016, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application.	05/11/2016	ML16154A117
STPNOC letter to NRC, Applicability of Application Supplement 1 Correspondence to Supplement 2 Regarding STP Risk-Informed GSI–191 Licensing Application.	06/09/2016	ML16176A148
STPNOC letter to NRC, Second Set of Responses to April 11, 2016, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application.	06/16/2016	ML16196A241
STPNOC letter to NRC, Third Set of Responses to April 11, 2016, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application—Part A.	07/18/2016	ML16209A226
STPNOC letter to NRC, Third Set of Responses to April 11, 2016, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application—Part B.	07/21/2016	ML16229A189
STPNOC letter to NRC, Third Set of Responses to April 11, 2016, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application—Part C.	07/21/2016	ML16230A232
STPNOC letter to NRC, Third Set of Responses to April 11, 2016, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application—Part D.	07/28/2016	ML16221A393
STPNOC letter to NRC, Third Set of Responses to April 11, 2016, Requests for Additional Information Regarding STP Risk-Informed GSI–191 Licensing Application—Part E.	09/12/2016	ML16272A162
STPNOC letter to NRC, Supplement 3 to Revised Pilot Submittal and Requests for Exemptions and License Amendment for a Risk-Informed Approach to Address Generic Safety Issue (GSI)–191 and Respond to Generic Letter (GL) 2004–02.	10/20/2016	ML16302A015
STPNOC letter to NRC, Response to Request for Additional Information Regarding Sensitivity Studies for STPNOC Risk-Informed Pilot GSI–191 Application.	11/9/2016	ML16321A407
STPNOC letter to NRC, Revised Applicability Matrix for Response to Request for Additional Information Questions APLA–1a and APLA–1b Regarding STP Risk-Informed GSI–191 Licensing Application.	12/7/2016	ML16365A006
STPNOC letter to NRC, Response to Request for Additional Information on Revised Applicability Matrix for Questions Regarding Risk-Informed GSI–191 Licensing Application.	01/19/2017	ML17025A123

Dated at Rockville, Maryland, this 2nd day of May, 2017.

For the Nuclear Regulatory Commission.

Robert J. Pascarelli,

Chief, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80584; File No. SR–NYSEArca–2017–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the IQ Municipal Insured ETF; IQ Municipal Short Duration ETF; and IQ Municipal Intermediate ETF Under NYSE Arca Equities Rule 8.600

May 3, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 20, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the IQ Municipal Insured ETF; IQ Municipal Short Duration ETF; and IQ Municipal Intermediate ETF (each a ''Fund'' and, collectively, the ''Funds'') under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''). The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of each Fund under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares.[5] The Shares will be offered by the IndexIQ Active ETF Trust (the ''Trust''), which is registered with the Commission as an open-end management investment company.[6] Each Fund is a series of the Trust.

The investment adviser to each Fund will be IndexIQ Advisors LLC (the ''Adviser''). MacKay Shields LLC will be each Fund's sub-adviser (Subadviser). ALPS Distributors, Inc. Inc. [sic] will serve as the distributor (the ''Distributor'') of each Fund's Shares on an agency basis. The Bank of New York Mellon (''BNY Mellon'') will serve as each Fund's Administrator, Custodian, Transfer Agent and Securities Lending Agent.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser or Subadviser is not a registered broker-dealer but is affiliated with a broker-dealer. The Adviser and Subadviser have implemented a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio. In the event (a) the Adviser or Subadviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

IQ Municipal Insured ETF

According to the Registration Statement, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions,[8] will invest at least 80% of its assets in municipal bonds (''Municipal Bonds'', as described below) that are covered by insurance policies that guarantee the timely

[4] The Securities and Exchange Commission (''Commission'') has approved for Exchange listing and trading shares of actively managed funds of the [sic] that principally hold municipal bonds. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund); 79293 (November 10, 2016), 81 FR 81189 (November 17, 2016) (SR–NYSEArca–2016–107) (order approving listing and trading of shares of Cumberland Municipal Bond ETF under Rule 8.600). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On February 24, 2017, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Funds (File Nos. 333–183489 and 811–22739) (''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812–13956) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Subadviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of a Fund's net assets as of the opening of business on the first day of such periods), a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objectives. A Fund may adopt a defensive strategy when the Adviser believes securities in which a Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

payment of principal and interest. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Insured Index.[9]

For [sic] Fund, as well as the IQ Municipal Short Duration ETF and IQ Intermediate ETF which are discussed below, the Subadviser's investment process will begin with an assessment of macro factors that may impact the municipal bond market, as well as other regulatory, tax, governmental, and technical factors that may impact the municipal bond market. Following the assessment of these factors, the Subadviser will develop an investment strategy to position a Fund among various sectors of the municipal bond market and different states. The Subadviser then will employ a fundamental, ''bottom-up'' credit research analysis to select individual Municipal Bonds.

Municipal Bonds

For purposes of this filing, the term ''Municipal Bonds'' as applied to each of the Funds includes the following:

- Municipal lease obligations (and certificates of participation in such obligations);
- municipal general obligation bonds (including industrial development bonds issued pursuant to federal tax law), which are issued for either project or enterprise financings in which the bond issuer pledges to the bondholders the revenues generated by the operating projects financed from the proceeds of the bond issuance;
- limited obligation bonds, which are payable only from the revenues derived from a particular facility or class of facilities or, in some cases from the proceeds of a special excise or other specific revenue source;
- municipal revenue bonds (which are typically secured by revenues generated by the issuer), including revenue anticipation notes;
- municipal bond anticipation notes (which are normally issued to provide interim financial assistance until long-term financing can be arranged);
- Municipal Bonds that feature credit enhancements, such as lines of credit, letters of credit, municipal bond insurance, and standby bond purchase agreements;
- discount bonds (which may be originally issued at a discount to par value or sold at market price below par value);
- premium bonds, which are sold at a premium to par value;
- zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity;
- taxable municipal bonds, including Build America Bonds;
- municipal notes;
- municipal cash equivalents;
- private activity bonds (including without limitation industrial development bonds);
- pre-refunded and escrowed to maturity bonds; and
- securities issued by entities whose underlying assets are Municipal Bonds (*i.e.,* tender option bond (TOB) trusts and custodial receipts trusts and variable rate demand notes (VRDNs) that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates).

The Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, the Fund's investments will be diversified among a minimum of ten different sectors of the Municipal Bond market. The Fund's investments in Municipal Bonds will include investments in state and local (*e.g.,* county, city, town) and authority-issued Municipal Bonds relating to such sectors as the following: State general obligation; local general obligation; education; hospital; housing; industrial development revenue (IDR)/pollution control revenue (PCR); power; resource recovery; transportation; water/sewer; leasing; special tax; and pre-refunded bonds. The Fund's investments will be diversified among at least 15 different states, with no more than 30% of the Fund's securities invested in municipal securities from a single state. Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.[10]

Other Investments

With respect to each of the Funds, while a Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, as described above, a Fund may invest its remaining assets in other assets and financial instruments, as described below.

A Fund may invest in shares of exchange-traded funds (''ETFs'') and money market funds,[11] and may invest directly and indirectly in: Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities (''U.S. Government Securities''); repurchase agreements; commercial paper; and may purchase securities on a when-issued basis or for settlement at a future date (forward commitment), if a Fund holds sufficient liquid assets to meet the purchase price (collectively, ''Other Investments'').

IQ Municipal Short Duration ETF

According to the Registration Statement, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average portfolio duration of three years or less.

The Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, the Fund's investments will be diversified among a minimum of ten different sectors of the municipal bond market. The Fund's investments will be diversified among at least 15 different states, with no more than 30% of the Fund's securities invested in municipal securities from a single state. Under normal market

[9] Municipal bonds are issued by or on behalf of the District of Columbia, states, territories, commonwealths and possessions of the United States and their political subdivisions and agencies, authorities and instrumentalities. Municipal securities, which may be issued in various forms, including bonds and notes, are issued to obtain funds for various public purposes.

[10] For purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, will be treated as separate issuers of Municipal Bonds.

[11] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges.

conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

While the Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, the Fund may invest its remaining assets in Other Investments.

IQ Municipal Intermediate ETF

According to the Registration Statement, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Intermediate Index.

The Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, the Fund's investments will be diversified among a minimum of ten different sectors of the municipal bond market. The Fund's investments will be diversified among at least 15 different states, with no more than 30% of the Fund's securities invested in municipal securities from a single state. Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

While the Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, the Fund may invest its remaining assets in Other Investments.

Determination of Net Asset Value (''NAV'')

According to the Registration Statement, the NAV of the Shares for a Fund will be equal to a Fund's total assets minus the Fund's total liabilities divided by the total number of Shares outstanding. Interest and investment income on the Trust's assets accrue daily and are included in a Fund's total assets. Expenses and fees (including investment advisory, management, administration and distribution fees, if any) accrue daily and are included in the Fund's total liabilities. The NAV is calculated by the Administrator and Custodian and determined each business day as of the close of the NYSE Arca Core Trading Session (ordinarily 4:00 p.m. Eastern time).

A Fund typically will value fixed-income portfolio securities, including Municipal Bonds, using last available bid prices or current market quotations provided by dealers or prices (including evaluated prices) supplied by a Fund's approved independent third-party pricing services. Pricing services may use matrix pricing or valuation models that utilize certain inputs and assumptions to derive values. An amortized cost method of valuation may be used with respect to debt obligations with sixty days or less remaining to maturity unless the Adviser determines in good faith that such method does not represent fair value.

Generally, trading in U.S. Government Securities, money market funds, and certain fixed-income securities is substantially completed each day at various times prior to the close of business on the NYSE. The values of such securities used in computing the NAV of the Fund will be determined as of such times.

The value of any ETFs held by the Fund is based on such securities' closing price on local markets, when available. The value of a money market fund held by a Fund will be based on the NAV of the money market fund.

When market quotations or prices are not readily available or are deemed unreliable or not representative of an investment's fair value, investments are valued using fair value pricing as determined in good faith by the Adviser under procedures established by and under the general supervision and responsibility of the Trust's Board of Trustees.

Indicative Intra-Day Value

The approximate value of each Fund's investments on a per-Share basis, the Indicative Intra-Day Value (''IIV'') will be disseminated by the Exchange or one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time). The IIV should not be viewed as a ''real-time'' update of NAV because the IIV may not be calculated in the same manner as NAV, which is computed once per day.

An independent third party calculator will calculate the IIV for each Fund during the Exchange's Core Trading Session by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total number of outstanding Shares of that Fund. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in a Fund's portfolio, the estimated amount of accrued interest owed to the Fund and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Trust's Web site.

Purchase and Redemption of Creation Units

Creation of Shares

According to the Registration Statement, the Trust will issue and sell Shares of a Fund only in Creation Units of at least 50,000 Shares on a continuous basis through the Distributor, at their NAV next determined after receipt, on any business day (that is, any day on which the New York Stock Exchange (''NYSE'') is open for business.), for an order received in proper form.

The consideration for purchase of a Creation Unit of a Fund generally will consist of an in-kind deposit of a designated portfolio of securities—the Deposit Securities—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in a Fund's portfolio and an amount of cash—the ''Cash Component.'' Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of a Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities.

The Administrator, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security to be included in the current

Fund Deposit (based on information at the end of the previous business day) for a Fund.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, the Administrator, through the NSCC, also will make available on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of a Fund.

To be eligible to place orders to create a Creation Unit of a Fund, an entity must be (i) a ''Participating Party'', *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the ''Clearing Process''), a clearing agency that is registered with the Commission; or (ii) a DTC Participant, and, in each case, must have executed an agreement (''Participant Agreement'') with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units. A Participating Party and DTC Participant are collectively referred to as an ''Authorized Participant.''

All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of at least 50,000 Shares. All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be received by the Distributor no later than 3:00 p.m. Eastern Time, in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of a Fund as next determined on such date after receipt of the order in proper form.

Redemption of Shares

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. Orders to redeem Creation Units must be received by the Administrator not later than 3:00 Eastern Time.

With respect to each Fund, the Administrator, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the designated portfolio of securities (''Fund Securities'') per each Creation Unit that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally will consist of Fund Securities—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

The redemption proceeds for a Creation Unit of a Fund will consist solely of cash in an amount equal to the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form less a redemption transaction fee.

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem such Shares in cash, and the redeeming Beneficial Owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which a Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of a Fund next determined after the redemption request is received in proper form. A Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of a Fund Securities but does not differ in NAV.

Availability of Information

Each Fund will disclose on the Funds' Web site (*www.iqetfs.com*) at the start of each business day the identities and quantities of the securities and other assets held by each Fund that will form the basis of the Fund's calculation of its net asset value (''NAV'') on that business day. The portfolio holdings so disclosed will be based on information as of the close of business on the prior business day and/or trades that have been completed prior to the opening of business on that business day and that are expected to settle on the business day. Online disclosure of such holdings is publicly available at no charge.

The Web site for the Funds will contain the following information, on a per-Share basis, for each Fund: (1) The prior business day's NAV; (2) the reported midpoint of the bid-ask spread at the time of NAV calculation (the ''Bid-Ask Price''); (3) a calculation of the premium or discount of the Bid-Ask Price against such NAV; and (4) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of a Fund if, shorter). In addition, on each business day, before the commencement of trading in Shares on the NYSE Arca, each Fund will disclose on its Web site the identities and quantities of the portfolio securities and other assets held by each Fund that will form the basis for the calculation of NAV at the end of the business day.

On a daily basis, the Funds will disclose the information required under NYSE Arca Equities Rule 8.600 (c)(2) to the extent applicable.

Each Fund's portfolio holdings will be disclosed on the Funds' Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

Information regarding the extent and frequency with which market prices of Shares have tracked the relevant Fund's NAV for the most recently completed calendar year and the quarters since that year will be available without charge on the Funds' Web site.

The approximate value of a Fund's investments on a per-Share basis, the IIV, will be disseminated every 15 seconds during the Exchange Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time).

Investors can also obtain each Fund's Statement of Additional Information (''SAI''), shareholder reports, Form N–CSR and Form N–SAR, filed twice a year. The Funds' SAI and shareholder reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be publicly available.

Quotation and last sale information for the Shares and will be available via the Consolidated Tape Association

(''CTA'') high-speed line, and from the national securities exchange [sic] on which they are listed.

Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds and Other Investments. Price information for money market funds will be available from the applicable investment company's Web site and from market data vendors. Pricing information regarding Municipal Bonds and Other Investments will generally be available through nationally recognized data service providers through subscription agreements. In addition, the IIV (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors or other information providers.[12]

Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[13]

Each Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Each Fund may invest more than 25% of its total assets in municipal bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, a Fund's investments will be diversified among a minimum of ten different sectors of the municipal bond market. A Fund's investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state. Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolios for the Funds will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600 applicable to the listing of Managed Fund Shares. Each Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(b)(1).[14]

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Funds on the Exchange notwithstanding that the Funds would not meet the requirements of Commentary .01(b)(1) to Rule 8.600 in that the Funds' investments in municipal securities will be well-diversified.

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of a Fund's portfolio may consist of components with less than $100 million minimum original principal amount outstanding would provide the Funds with greater ability to select from a broad range of Municipal Bonds, as described above, that would support a Fund's investment goal.

The Exchange believes that, notwithstanding that each Fund's portfolio may not satisfy Commentary .01(b)(1) to Rule 8.600, the Funds' portfolios will not be susceptible to manipulation. As noted above, the Funds' investments will be diversified among a minimum of ten different sectors of the municipal bond market. The Funds' investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state. Additionally, no Municipal Bond held by a Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio. A Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers. The Exchange notes that, other than Commentary .01(b)(1) to Rule 8.600, each Fund's portfolio will meet all other requirements of Rule 8.600.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[15] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

[12] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

[13] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[14] Commentary .01(b)(1) to NYSE Arca Equities Rule 8.600 provides that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[15] *See* NYSE Arca Equities Rule 7.12.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of a Fund's portfolio. The Exchange represents that, for initial and/or continued listing, a Fund will be in compliance with Rule 10A–3 [16] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Each Fund's investments will be consistent with a Fund's investment goal and will not be used to enhance leverage.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[17]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.[18]

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and ETFs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) or (c) [sic] the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of a Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [19] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the

[16] 17 CFR 240.10A–3.

[17] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[18] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[19] 15 U.S.C. 78f(b)(5).

Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. Each Fund may not purchase illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and will implement and maintain a fire wall with respect to each of its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios.

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Funds on the Exchange notwithstanding that the Funds would not meet the requirements of Commentary .01(b)(1) to Rule 8.600 in that the Funds' investments in municipal securities will be well-diversified. As noted above, the Funds' investments will be diversified among a minimum of ten different sectors of the municipal bond market. The Funds' investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state. Additionally, no Municipal Bond held by a Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio. A Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers. The Exchange notes that, other than Commentary .01(b)(1) to Rule 8.600, each Fund's portfolio will meet all other requirements of Rule 8.600.

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of a Fund's portfolio may consist of components with less than $100 million minimum original principal amount outstanding would provide the Funds with greater ability to select from a broad range of municipal securities, as described above, that would support a Fund's investment goal.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding each Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and ETFs will be available via the CTA high-speed line, and from the national securities exchange [sic] on which they are listed. Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, IIV, Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2017–44 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–NYSEArca–2017–44. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–44 and should be submitted on or before May 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09311 Filed 5–8–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80585; File No. SR–NASDAQ–2017–041]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fees at Rule 7047

May 3, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 20, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees at Rule 7047 to clarify the application of Nasdaq fees to Derived Data in light of changing industry practices. Specifically, the proposed changes will: (i) Limit application of the Derived Data Distributor Fee for Nasdaq Basic in Rule 7047(c)(2) only to those Distributors that both create and distribute Derived Data; (ii) clarify that the Nasdaq Basic per Subscriber user fees in Rules 7047(b)(1) and (b)(2), and the distributor fee in Rule 7047(c)(1), cover both Nasdaq data feeds and Derived Data therefrom; and (iii) clarify that the enterprise licenses for Professional and Non-Professional Subscribers in Rules 7047(b)(4) and (b)(5) cover the distribution of Derived Data from Nasdaq Basic. The proposal is described in further detail below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the application of Nasdaq fees to Derived Data in light of changing industry practices. Specifically, the proposed changes will: (i) Limit application of the Derived Data Distributor Fee for Nasdaq Basic in Rule 7047(c)(2) only to those Distributors that both create and distribute Derived Data; (ii) clarify that the Nasdaq Basic per Subscriber user fees in Rules 7047(b)(1) and (b)(2), and the distributor fee in Rule 7047(c)(1), cover both Nasdaq data feeds and Derived Data therefrom; and (iii) clarify that the enterprise licenses for Professional and Non-Professional Subscribers in Rules 7047(b)(4) and (b)(5) cover the distribution of Derived Data from Nasdaq Basic.

Nasdaq Basic

Nasdaq Basic provides best bid and offer information from the Nasdaq Market Center, as well as last sale transaction reports from both the Nasdaq Market Center and the FINRA/Nasdaq Trade Reporting Facility (''TRF''). This is a subset of the ''core'' quotation and last sale data provided by securities information processors under the CQ/CT Plan and the UTP Plan. The three components of Nasdaq Basic, which may be purchased individually or in combination, are: (i) Nasdaq Basic for Nasdaq, which contains the best bid and offer on the Nasdaq Market Center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRF for Nasdaq-listed stocks; (ii) Nasdaq Basic for NYSE, which covers NYSE-listed stocks, and (iii) Nasdaq Basic for NYSE MKT, which provides data on stocks listed on NYSE MKT and other listing venues whose quotes and trade reports are disseminated on Tape B.

Derived Data Distributor Fee

A Distributor[3] of Derived Data[4] from Nasdaq Basic may pay a $1,500 per month fee to disseminate such data to an unlimited number of Non-Professional Subscribers[5] under Rule 7047(c)(2). If a Distributor elects not to pay the Derived Data Distributor Fee, the Distributor must pay the per Subscriber charges for Non-Professionals set forth in Rule 7047(b)(2). In either case, Distributors of Derived Data must also pay the

[3] A ''Distributor'' is ''any entity that receives NASDAQ Basic data directly from NASDAQ or indirectly through another entity and then distributes it to one or more Subscribers.'' Nasdaq Rule 7047(d)(1).

[4] ''Derived Data'' is ''pricing data or other information that is created in whole or in part from NASDAQ information; it cannot be reverse engineered to recreate NASDAQ information, or be used to create other data that is recognizable as a reasonable substitute for NASDAQ information.'' Nasdaq Rule 7047(d)(5).

[5] A ''Non-Professional Subscriber'' is a natural person who is not (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or (ii) any commodities or futures contract market or association; engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. Nasdaq Rule 7047(d)(3)(A).

Distributor fee set forth in Rule 7047(c)(1).

The Exchange has recently become aware that certain Distributors create Derived Data (''Primary Distributors''), and send it to other Distributors, which transmit the Derived Data in the same form that it was received to Subscribers (''Secondary Distributors''). The Exchange, in its initial filing for the Derived Data Distributor Fee in 2011, stated that the fee applied only to firms that ''derive data from Nasdaq Basic'' [6]—*i.e.,* the Primary Distributors. The text of Rule 7047(c)(2), however, does not distinguish between Primary and Secondary Distributors. Rule 7047(c)(2) states that ''[a] Distributor may pay $1,500 per month to distribute Derived Data from Nasdaq Basic,'' implying that all Distributors—both Primary and Secondary—may pay that fee. Further clarification appeared to be unnecessary at the time because the Exchange was not aware of the existence of Secondary Distributors.

In light of changing industry practice, the Exchange proposes to clarify the Rule to state that only Distributors that ''create and distribute Derived Data from Nasdaq Basic'' pay the fee, thereby excluding Secondary Distributors from application of Rule 7047(c)(2). This is a codification of Nasdaq's intent as set forth in the initial filing and Nasdaq's interpretation of Rule 7047(c)(2) based on that rule and related filings, and will not change customer fees.

User Fees for Nasdaq Basic

Professional Subscribers [7] to Nasdaq Basic pay per Subscriber monthly charges of $13.00 for Nasdaq Basic for Nasdaq, $6.50 for Nasdaq Basic for NYSE, and $6.50 for Nasdaq Basic for NYSE MKT under Rule 7047(b)(1). Non-Professional Subscribers pay at the reduced monthly rates of $0.50, $0.25, and $0.25, respectively, under Rule 7047(b)(2).

When the Derived Data Distributor Fee, currently set forth in Rule 7047(c)(2) was introduced in 2011, the Exchange explained in the accompanying filing that the fee ''would be in lieu of non-professional subscriber fees,'' [8] indicating that the monthly per Subscriber fees set forth in Rule 7047(b)(2) applied to Derived Data. There was no explicit reference to Derived Data in Rule 7047(b)(2) because the Exchange was not aware of instances in which Derived Data was distributed without a Nasdaq Basic data feed, rendering such a reference unnecessary.

The Exchange has recently become aware, however, that certain Subscribers purchase Derived Data without a Nasdaq Basic data feed. The Exchange proposes to clarify Rule 7047(b)(2), and the parallel rule for Professional Subscribers at Rule 7047(b)(1), to state that the per Subscriber monthly charges allow the transmission of both Nasdaq Basic feeds and/or any Derived Data therefrom.

Similarly, the distributor fee for Nasdaq Basic in Rule 7047(c)(1) did not separately reference Derived Data because such data was not distributed without a Nasdaq Basic data feed. Because industry practice has changed, the Exchange proposes to clarify that the distributor fee in Rule 7047(c)(1) covers Derived Data, as well as the Nasdaq Basic data feed.

These proposed changes will not change prices, but rather are a codification of the Exchange's original intent and its interpretation of these Rules based on the text of the Rules and their related filings, in light of changes in industry practice.

Nasdaq Basic Enterprise Licenses

Broker-dealers may purchase two enterprise licenses for Nasdaq Basic in lieu of per Subscriber user fees: (i) An enterprise license for Professional and Non-Professional Subscribers with whom the broker-dealer has a brokerage relationship under Rule 7047(b)(5); or (ii) an enterprise license for internal Professional Subscribers under Rule 7047(b)(4). The enterprise license for Subscribers in a brokerage relationship was introduced in 2011,[9] but the rule did not specify whether that license would cover the distribution of Derived Data. The enterprise license for internal Professional Subscribers, introduced in 2014,[10] did not explicitly reference Derived Data either.

The enterprise license for internal Professional Subscribers was introduced as an alternative to the Nasdaq Basic user fees set forth in Rule 7047(b)(1), and the enterprise license for Subscribers with whom the broker-dealer has a brokerage relationship was designed as an alternative to the user fees set forth in Rule 7047(b)(1) and (b)(2). For the reasons set forth above, the fees set forth at Rules 7047(b)(1) and (b)(2) were intended to cover the distribution of Derived Data. Because these enterprise licenses were introduced as alternatives to Rules 7047(b)(1) and (b)(2), these licenses were intended to cover Derived Data as well. In light of a change in industry practice in which Derived Data is sometimes distributed without a proprietary data feed, the Exchange proposes to codify the original intent of the Exchange, and its interpretation of the Rules and related filings, and explicitly state that the enterprise licenses at Rules 7047(b)(4) and (b)(5) cover the distribution of Derived Data from Nasdaq Basic.

In summary, the proposed changes clarify how Nasdaq Basic fees set forth in Rule 7047 apply to Derived Data. The first change clarifies that the Derived Data Distributor Fee does not apply to Secondary Distributors, *i.e.,* entities that distribute, but do not create, Derived Data. The second change clarifies that the per Subscriber user fees set forth in Rule 7047(b)(1) and (b)(2), and the distributor fee in Rule 7047(c)(1) also allow the distribution of Derived Data. The third change clarifies that the enterprise licenses under Rules 7047(b)(4) and (b)(5) cover the distribution of Derived Data. None of these proposed changes raise the cost of Nasdaq Basic or any other Nasdaq product, but rather codify the original intent and ongoing interpretation of Rule 7047.

The fees for all Nasdaq Basic products—including Derived Data from Nasdaq Basic—are entirely optional, in that they apply only to Distributors or Subscribers that opt to purchase Nasdaq Basic or Derived Data therefrom. The proposed changes do not impact the cost of any Nasdaq product, including Nasdaq Basic and any Derived Data from Nasdaq Basic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory

[6] *See* Securities Exchange Act Release No. 64994 (July 29, 2011), 76 FR 47621 (August 5, 2011) (SR–NASDAQ–2011–091).

[7] A ''Professional Subscriber'' is any Subscriber other than a Non-Professional Subscriber. Nasdaq Rule 7047(d)(3)(B).

[8] *See* Securities Exchange Act Release No. 64994 (July 29, 2011), 76 FR 47621 (August 5, 2011) (SR–NASDAQ–2011–091).

[9] *See* Securities Exchange Act Release No. 65526 (October 11, 2011), 76 FR 64137 (October 17, 2011) (SR–NASDAQ–2011–130).

[10] *See* Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [14] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[15] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [16]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [17]

The Exchange believes that the current proposals—(i) to limit application of the Derived Data Distributor Fee, (ii) clarify the application of Nasdaq Basic per Subscriber user fees and a distributor fee to Derived Data, and (iii) establish that Derived Data is included in the Professional and Non-Professional enterprise licenses—are fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. The proposed changes do not change any fee, but rather codify and clarify Nasdaq's interpretation of its rules. Moreover, fees for Nasdaq Basic and its associated Derived Data, like all market data fees, are constrained by the Exchange's need to compete for order flow, and are subject to competition from other exchanges and among broker-dealers for customers. If Nasdaq is incorrect in its assessment, there is no barrier to block a competitor from entering the market with substantially similar products.

The Exchange believes that the proposed changes are an equitable allocation and not unfairly discriminatory because the Exchange will apply the same fees to all similarly-situated Distributors.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Nasdaq Basic—and all data derived from Nasdaq Basic—is subject to competition from the NYSE, BATS, and other exchanges that offer similar products. If Nasdaq Basic were to prove unattractive to market participants, it is likely that the Exchange would lose market share as a result.

As noted above, the proposed changes do not affect any existing fees, which are, in any event, constrained by market forces in three distinct respects. First, all fees related to Nasdaq Basic are constrained by the competition among exchanges and other entities in attracting order flow. Firms make decisions regarding this and other proprietary data products based on the total cost of interacting with the Exchange, and, because the supracompetitive pricing of any proprietary data product increases the total cost of interacting with the Exchange, such pricing would harm order flow. Second, the price of Nasdaq Basic is constrained by the existence of multiple substitutes that are offered, or may be offered, by entities that offer proprietary or non-proprietary data. Third, the proposed fee will be constrained by competition among Distributors for Subscribers.

Competition for Order Flow

All fees related to Nasdaq Basic are constrained by competition among exchanges and other entities seeking to attract order flow. Order flow is the ''life blood'' of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including thirteen self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

The level of competition and contestability in the market for order flow is demonstrated by the numerous examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, and TracECN. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade.

Each SRO, TRF, ATS, and BD that competes for order flow is permitted to produce proprietary data products. Many currently do or have announced plans to do so, including NYSE, NYSE Amex, NYSE Arca, and the BATS exchanges. This is because Regulation NMS deregulated the market for proprietary data. While BDs had previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Order routers and market data vendors can facilitate production of proprietary data products for single or multiple BDs. The potential sources of

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[15] *See NetCoalition,* at 534–535.

[16] *Id.* at 537.

[17] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

proprietary products are virtually limitless.

The markets for order flow and proprietary data are inextricably linked: A trading platform cannot generate market information unless it receives trade orders. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with an exchange, and data fees are a factor in the total platform analysis. A supracompetitive increase in the fees charged for proprietary data has the potential to impair revenue for the exchange as a result. The competition for order flow will therefore constrain prices for proprietary data products, including charges relating to Nasdaq Basic.

Substitute Products

The price of data derived from Nasdaq Basic is also constrained by the existence of multiple substitutes offered by numerous entities, including both proprietary data offered by other SROs or other entities, and non-proprietary data disseminated by Nasdaq in its capacity as a Securities Information Processor (''SIP'') for the national market system plan governing securities listed on Nasdaq as a national securities exchange (''Nasdaq UTP Plan'').

The information provided through Nasdaq Basic is a subset of the best bid and offer and last sale data provided by the SIP. The ''core'' data disseminated by the SIP consists of best-price quotations and last sale information from all markets in U.S.-listed equities; Nasdaq Basic provides best bid and offer and last sale information for all U.S. exchange-listed stocks based on trade reports from the Nasdaq Market Center and the FINRA/Nasdaq Trade Reporting Facility. Many customers that purchase SIP data do not also purchase Nasdaq Basic. Where customers buy both products, they may shift the extent to which they purchase one or the other based on relative price changes. The SIP constrains the price of Nasdaq Basic because no purchaser would pay an excessive price for Nasdaq Basic when similar data is available from the SIP.

Proprietary data sold by other exchanges also constrain the price of Nasdaq Basic because other exchanges, such as NYSE and BATS, also sell proprietary non-core data that include best bid and offer and last sale data. Customers would not pay an excessive price for Nasdaq Basic when substitute data is available from other proprietary sources, and customers would not typically purchase proprietary best bid and offer and last sale data from multiple exchanges.

Competition for Subscribers

Distributors that disseminate data derived from Nasdaq Basic are in competition for Subscribers. If the price of such data were set above competitive levels, Distributors would be at a competitive disadvantage relative to their competitors, and may lower their costs by substituting Nasdaq data with other products, in whole or in part. Competition for Subscribers therefore provides another constraint on the cost of Derived Data.

In summary, market forces constrain the price of Nasdaq Basic through competition for order flow, competition from substitute data products, and in the competition among Distributors for Subscribers. For these reasons, the Exchange has provided a substantial basis demonstrating that the fee is equitable, fair, reasonable, and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–NASDAQ–2017–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–041. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–041 and should be submitted on or before May 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09312 Filed 5–8–17; 8:45 am]

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[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80580; File No. SR–BatsBZX–2017–25]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22, Data Products, To Adopt a New Market Data Product Known as the ETF Implied Liquidity Feed

May 3, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2017, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.22, Data Products, to adopt a new market data product known as the ETF Implied Liquidity feed.

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[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)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.22, Data Products, to adopt a new market data product known as the ETF Implied Liquidity feed. The ETF Implied Liquidity feed would be an optional data feed that would provide the Exchange's proprietary calculation of the implied liquidity and the aggregate best bid and offer (''BBO'') of all displayed orders on the Exchange and its affiliated exchanges [5] for all standard, non-leveraged U.S. equity Exchange Traded Funds (''ETFs'') traded on the System.[6] An ETF's implied liquidity disseminated via the proposed feed would consist of the ETF's implied BBO (including the implied size) calculated via a proprietary methodology based on the national best bid and offer (''NBBO''), the number of shares of securities underlying one creation unit of the ETF, and the estimated cash included in one creation unit of the ETF. The Exchange will disseminate the aggregate BBO through the ETF Implied Liquidity feed no earlier than it provides its BBO to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The ETF Implied Liquidity feed would provide market participants with an additional price discovery tool that would assist in trading of standard, non-leveraged U.S. equity ETFs and their underlying securities. The Exchange's calculation of the ETF's implied liquidity via the ETF Implied Liquidity feed would provide a more granular measure of an ETF's intraday indicative value (''IIV'', also commonly referred to as intraday net asset value (''iNAV'')) by incorporating the NBBO and its size along with other data elements described above. This enhanced measure of implied liquidity can provide market participants with a more complete picture of the liquidity available for an ETF based on its underlying securities.

As ETFs trade similar to stocks throughout the day, the IIV of the ETF can fluctuate with the prices of the underlying securities intraday. For this reason, ETF issuers are required to publish an IIV for the ETF during the trading day which provides a snapshot estimate of the value of the ETF based on the last sale for the underlying securities. The IIV is generally calculated and disseminated periodically intraday by summing the last sale of all of the ETF's underlying securities divided by the number of shares outstanding.[7] This current calculation of IIV is designed to provide investors with a reasonable estimate of the value of the ETF. However, this calculation of IIV provides a single value that does not include size or account for an ETF trading at a premium or discount to the IIV. For one, current IIV calculations do not consider the liquidity of the ETF or underlying securities so traded prices may differ from the theoretical snapshot due to bid/ask spreads and/or market impact. Although arbitrage activity between the ETF and its underlying securities tends to keep the traded price very close to IIV, there may still be variations. Therefore, the Exchange proposes to calculate on a real-time basis a more granular and enhanced measure of IIV by incorporating the following data points for each ETF into its proprietary calculation of the ETF's implied liquidity: the NBBO (including size), the number of shares of securities underlying one creation unit of the ETF, and the estimated cash included in one creation unit of the ETF.[8] The Exchange's calculation of the ETF's implied liquidity would provide additional data than what is currently provided via the ETF's IIV calculation of a single value, such as the implied best bid, the implied best offer and their implied sizes.

The Exchange believes providing the implied bid and the implied offer based on the ETF's underlying basket of securities can provide investors with even more insight into the true value of the ETF than the current calculation of IIV (or iNAV). The Exchange also notes that many market participants today calculate and provide to their customers

[5] The Exchange's affiliates are Bats EDGA Exchange, Inc., (''EDGA''), Bats EDGX Exchange, Inc. (''EDGX''), and Bats BYX Exchange, Inc. (''BYX'') (''collectively, the ''Bats Exchanges'').

[6] The securities underlying each of the U.S. equity ETFs included in the proposed feed must be considered NMS Securities as defined under Rule 600(b)(46) of Regulation NMS. 17 CFR 242.600(b)(46).

[7] *See Understanding Net Asset Value, available at http://www.etf.com/etf-education-center/21025-understanding-net-asset-value.html* (last visited February 21, 2017).

[8] The Exchange intends to include a disclaimer as part of the proposed ETF Implied Liquidity feed that would alert subscribers that the Exchange's calculation of the ETF's implied liquidity may differ from the fund's calculation of IIV or iNAV and does not account for potential creation or redemption fees associated with trading in the ETF's underlying basket of securities. In addition, the Exchange's calculation of the ETF's implied liquidity is an enhanced version of an ETF's NAV that is calculated and disseminated intra-day and is not intended to be confused with the ETF's end of day calculation of the ETF's NAV which consists of a single value.

IIV for ETFs in which they make markets. The proposed ETF Implied Liquidity feed could serve to assist these market participants in developing and verifying their own IIV calculations provided to customers.

The Exchange intends to file a separate rule change with the Commission proposing fees to be charged for the ETF Implied Liquidity feed. The Exchange anticipates offering the ETF Implied Liquidity feed on the date of effectiveness of the rule filing to establish those fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the ETF Implied Liquidity feed. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in improved, more granular calculations of an ETF's implied liquidity as provided by the proposed feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [11] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. The ETF Implied Liquidity feed would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue their use at any time and for any reason. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[13]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, the proposed ETF Implied Liquidity feed promotes just and equitable principles of trade by providing market participants with an additional price discovery tool that would assist in trading of standard, non-leveraged U.S. equity ETFs and their underlying securities. As stated above, the proposed feed would provide investors with even more insight into the true value of the ETF than the current calculations of IIV (or iNAV) by incorporating the NBBO and its size along with other data elements described above. The proposed calculation of an ETF's implied liquidity via the proposed ETF Implied Liquidity feed can provide market participants with a more complete picture of the liquidity available for an ETF based on its underlying securities. The proposed ETF Implied Liquidity feed could also serve to assist market participants in their own IIV (or iNAV) calculations that they provide to customers for ETFs in which they make markets. Therefore, the Exchange believes the proposed feed promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system.

Lastly, the ETF Implied Liquidity feed removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and competing with similar market data products currently offered by the Nasdaq Stock Market LLC (''Nasdaq'').[14] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[16] The

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (''Regulation NMS Adopting Release'').

[14] *See* Nasdaq's Global Index Data Service (''GIDS'') *available at http://business.nasdaq.com/intel/indexes/index-data/index.html#!/tcm:5044-12151* (providing on a real-time basis intraday portfolio values, daily valuation information, such as NAV per Share, estimated cash per Share, estimated cash per creation unit, total cash per creation unit and total shares outstanding of the fund and ETF directory messages designed to provide the symbols of the ETF valuations). *See* footnote 28 of Securities Exchange Act Release No. 77714 (April 26, 2016), 81 FR 26281 (May 2, 2016) (describing Nasdaq's GIDS within the order approving SR–Nasdaq–2016–028). *See also* footnote 29 of Securities Exchange Act Release No. 78592 (August 16, 2016), 81 FR 56729 (August 22, 2016) (describing Nasdaq's GIDS within the order approving SR–Nasdaq–2016–061). *See, e.g.,* the NYSE Arca, Inc.'s (''NYSE Arca'') EOD ETF Report *available at http://www.nyxdata.com/Data-Products/NYSE-Arca-EOD-ETF-Report* (providing information such as the ETF's closing trades and quotes at different key points during the trading day, as well referential information such as shares outstanding, the primary market, and NAV).

[15] *See* Regulation NMS Adopting Release, *supra* note 13.

[16] The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO for securities traded on each of the Bats Exchanges. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the ''Bats One Summary Feed''). *See* Exchange Rule 11.22(j). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–

Exchange believes that the proposal will promote competition by enabling the Exchange to offer a market data product similar to that currently offered by Nasdaq and NYSE Arca.[17] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, 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[18] and paragraph (f)(6) of Rule 19b–4 thereunder,[19] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BatsBZX–2017–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2017–25. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–25 and should be submitted on or before May 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09314 Filed 5–8–17; 8:45 am]

BILLING CODE 8011–01–P

BYX–2014–030) (Notice of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) (''Bats One Approval Order''). The Exchange would provide the aggregate BBO disseminated via the Bats One Summary Feed as part of the ETF Implied Liquidity feed. The Exchange utilizes the following data feeds to create the Bats One Summary Feed's aggregated BBO, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and BZX PITCH Feed. Rather than these depth-of-book feeds, the Exchange notes that a vendor seeking to build a competing product to the proposed ETF Implied Liquidity feed could simply utilize the top-of-book data feeds from each of the Bats Exchange's to create an aggregated BBO. These top-of-book feeds are EDGA Top, EDGX Top, BYX Top and BZX Top. The Exchange represents that a competing vendor could obtain these top-of-book data feeds from each of the Bats Exchanges on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Summary Feed. *See* Bats One Approval Order. While the proposed ETF Implied Liquidity feed does not separately provide the ETF's NBBO, the number of shares of securities underlying one creation unit of the ETF, or the estimated cash included in one creation unit of the ETF, a vendor could obtain this information from the securities information processors and other publicly available sources to perform its own calculation of an ETF's implied liquidity to include as part of a competing product. Therefore, a vendor could create a product to compete with the proposed ETF Implied Liquidity feed on the same terms as the Exchange. With regard to cost, as stated above, the Exchange will file a separate rule filing with the Commission to establish fees for the ETF Implied Liquidity feed that would be designed to ensure that vendors could compete with the Exchange by creating a similar product.

[17] *See supra* note 14.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80581; File No. SR–Phlx–2017–04]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of P.M.-Settled NASDAQ–100 Index® Options on a Pilot Basis

May 3, 2017.

I. Introduction

On January 18, 2017, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the listing and trading of P.M.-settled NASDAQ–100 Index® (''NASDAQ–100'') options on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on February 3, 2017.[3] On March 14, 2017, the Commission extended the time period within which to approve the proposed rule change,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79894 (January 30, 2017), 82 FR 9259 (''Notice'').

disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] On May 2, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission received no comment letters on the proposed rule change.

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange is proposing to amend its rules to permit the listing and trading, on a pilot basis, of NASDAQ–100 options with third-Friday-of-the-month expiration dates, whose exercise settlement value will be based on the closing index value, symbol XQC, of the NASDAQ–100 on the expiration day (''P.M.-settled'').

The Exchange represents that the conditions for listing the proposed contract (''NDXPM'') on Phlx will be similar to those for Full Value Nasdaq 100 Options (''NDX''), which are already listed and trading on Phlx, except that NDXPM will be P.M.-settled.[7] In particular, NDXPM will use a $100 multiplier, and the minimum trading increment will be $0.05 for options trading below $3.00 and $0.10 for all other series. Strike price intervals will be set at no less than $5.00. Consistent with existing rules for index options, the Exchange will allow up to nine near-term expiration months, as well as LEAPS. The product will have European-style exercise and will not be subject to position limits, though there would be enhanced reporting requirements.[8]

As proposed, the proposal would become effective on a pilot basis for a period of twelve months (''Pilot Program''). If the Exchange were to propose an extension of the Pilot Program or should the Exchange propose to make the Pilot Program permanent, then the Exchange would submit a filing proposing such amendments to the Pilot Program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a P.M.-settled series that expires beyond the conclusion of the pilot period could be established during the 12-month pilot. If the Pilot Program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.

The Exchange proposes to submit a Pilot Program report to the Commission at least two months prior to the expiration date of the Pilot Program (the ''annual report''). The annual report would contain an analysis of volume, open interest, and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise the NASDAQ–100. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. In addition to the annual report, the Exchange would provide the Commission with periodic interim reports while the pilot is in effect that would contain some, but not all, of the information contained in the annual report. The annual report would be provided to the Commission on a confidential basis. The annual report would contain the following volume and open interest data:

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (6) above periodically as required by the Commission while the Pilot Program is in effect. These interim reports would also be provided on a confidential basis. The annual report would also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled NASDAQ–100 options traded on Phlx.

In addition, the annual report would contain the following analysis of trading patterns in Expiration Friday, P.M.-settled NASDAQ–100 option series in the Pilot Program: (1) A time series analysis of open interest; and (2) an analysis of the distribution of trade sizes. Also, for series that exceed certain minimum parameters, the annual report would contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays: A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index as agreed by the Commission and the Exchange, would be provided. The Exchange would provide a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period. The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.[9]

III. Proceedings To Determine Whether To Approve or Disapprove SR–Phlx–2017–04, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[10] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at

[4] *See* Securities Exchange Act Release No. 80241, 82 FR 14393 (March 20, 2017).

[5] In Amendment No. 1, the Exchange revised its proposal to add that raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index as agreed by the Commission and the Exchange, would be provided as part of the pilot data. When the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 to the public comment file for SR–Phlx–2017–04 (available at: *www.sec.gov/comments/sr-phlx-2017–04/phlx201704.htm*).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 9260.

[8] For a more detailed description of the proposed NDXPM contract, *see* Notice, *supra* note 3.

[9] *See* Notice, *supra* note 3, at 9261 and Amendment No. 1. The proposed Pilot Program for NDXPM options is similar to the pilot program approved for the listing and trading of P.M.-settled S&P 500 Index options (''SPXPM options''). *See* Securities Exchange Act Release No. 64011 (March 2, 2011), 76 FR 12775, 12776–77 (March 8, 2011) (''SPXPM Notice'').

[10] 15 U.S.C. 78s(b)(2)(B).

this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,[11] the Commission is providing notice of the grounds for disapproval under consideration, as discussed below. In particular, Section 6(b)(5) of the Act [12] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.[13] The Commission believes that the proposal to allow P.M. settlement of an option on the NASDAQ–100 raises questions as to the potential effects on the underlying cash equities markets, and thus as to whether it is consistent with the requirements of Section 6(b)(5) of the Act, including whether the proposal is designed to prevent manipulation, promote just and equitable principles of trade, perfect the mechanism of a free and open market and the national market system, and protect investors and the public interest.

Accordingly, the Commission solicits comment, analysis, and data concerning whether the Exchange's proposal is consistent with the Act. The Commission is asking commenters to address the merits of Phlx's statements in support of its proposal, in addition to any other comments they may wish to submit about the proposed rule change or any data or analysis that commenters think may be relevant to the Commission's consideration of the proposal. Specifically, the Commission seeks input from commenters to inform its evaluation of whether P.M. settlement for Phlx's proposed options on the NASDAQ–100 could impact volume and volatility on the underlying cash equities markets at the close of the trading day, and the potential consequences this might have for investors and the overall stability of the markets.

In addition, the Commission seeks input from commenters with respect to the operation and structure of the markets today in comparison to their operation and structure at the time of the shift to A.M. settlement of cash-settled index options, and whether the current operation and structure of the markets support, or do not support, allowing NASDAQ–100 options on Phlx to be P.M.-settled.

More generally, the Commission seeks commenters' views on whether there are differences between Phlx's proposed product and other P.M.-settled, cash-settled options that raise novel issues and, if so, whether commenters believe such differences warrant different treatment or a different pilot design.

As noted above, the Exchange's proposal seeks to allow the listing and trading of NDXPM options on a pilot basis, and the Pilot Program, including its associated data and reports, are key in assisting the Commission and its staff to analyze the impact of the proposal, including with respect to the concerns described above. Thus, the Commission is considering and requesting comment on whether commenters believe the proposed Pilot Program is appropriate. As noted above, the proposed Pilot Program is similar to the pilot program for the listing and trading of SPXPM options.[14] The Commission requests commenters' views on whether the proposed Pilot Program would adequately demonstrate whether the Commission's concerns about the adverse effect and impact of P.M. settlement are, or are not, implicated by the listing and trading of P.M.-settled options on the NASDAQ–100 and, if not, what information or data the pilot should include. The Commission seeks public comment on whether there are differences between the listing and trading of SPXPM options and the proposed NDXPM options that would warrant differences in the data, analyses, or reports that should be required for the Exchange's proposed pilot. In addition, Amendment No. 1 of the proposal added that ''[r]aw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index as agreed by the Commission and the Exchange'' would be included as part of the pilot. The Commission seeks input on what commenters believe would be appropriate data to use with respect to measuring volatility for the proposed pilot.

Finally, the Commission requests any comment, data, or analysis that commenters think may be relevant to the Commission's consideration of the Exchange's proposal for P.M.-settled options on the NASDAQ–100.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[15]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment No. 1, should be approved or disapproved by May 30, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 13, 2017.

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

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

[13] For a detailed discussion of the history of the concerns related to such P.M. settlement, *see* Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801–02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options) and 65256 (September 2, 2011), 76 FR 55969, 55970–76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options).

[14] *See* SPXPM Notice, *supra* note 9.

[15] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2017–04 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–Phlx–2017–04. 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 Web site (*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 Web site 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–04 and should be submitted on or before May 30, 2017. Rebuttal comments should be submitted by June 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09315 Filed 5–8–17; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(57).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15088 and #15089]

CALIFORNIA Disaster Number CA–00264

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of CALIFORNIA (FEMA–4305–DR), dated 03/16/2017.

Incident: Severe Winter Storms, Flooding, and Mudslides.

Incident Period: 01/18/2017 through 01/23/2017.

Effective Date: 05/03/2017.

Physical Loan Application Deadline Date: 05/15/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 12/18/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of CALIFORNIA, dated 03/16/2017, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Alameda, Calaveras, Contra Costa Inyo, Modoc, Mono.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2017–09347 Filed 5–8–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15125 and #15126]

Resighini Rancheria Disaster #CA–00273

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Resighini Rancheria (FEMA–4312–DR), dated 05/02/2017.

Incident: Flooding

Incident Period: 02/08/2017 through 02/11/2017

Effective Date: 05/02/2017

Physical Loan Application Deadline Date: 07/03/2017

Economic Injury (EIDL) Loan Application Deadline Date: 02/02/2018

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/02/2017, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Resighini Rancheria

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 151256 and for economic injury is 151266.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2017–09346 Filed 5–8–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority: 424]

Authority To Accept Volunteer Services From Students

By virtue of the authority vested in the Secretary of State by the laws of the United States, including 22 U.S.C. 2651a and 5 U.S.C. 3111 (''Section 3111''), and delegated pursuant to Delegation of Authority 372, dated April 4, 2014, to the extent authorized by law and pursuant to subsection (b) of Section 3111, I hereby delegate the

authority of the Secretary to accept for the United States voluntary services of students participating in the Foreign National Student Intern Program managed by the Bureau of Human Resources, Office of Overseas Employment, to the following Department officials:

- All Chiefs of Mission and their designees.

Any official actions within the scope of this delegation taken prior to the effective date of this delegation, by officers in the positions named above, are hereby ratified and continued in effect, according to their terms, until modified, revoked, or superseded by authorized action.

Notwithstanding this delegation of authority, the Secretary, a Deputy Secretary, the Under Secretary of State for Management, and the Director General of the Foreign Service may at any time exercise the authority herein delegated.

This delegation of authority will be published in the **Federal Register**.

Dated: March 31, 2017.

Arnold Chacon,

Director General of Human Resources.

[FR Doc. 2017–09375 Filed 5–8–17; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 9985]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Orchestrating Elegance: Alma-Tadema and Design'' Exhibition

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that certain objects to be included in the exhibition ''Orchestrating Elegance: Alma-Tadema and Design,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about June 4, 2017, until on or about September 3, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–09307 Filed 5–8–17; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 17–02]

Sunshine Act Meeting Notice

The TVA Board of Directors will hold a public meeting on May 11, 2017, at the Tucker Theatre, 615 Champion Way, Murfreesboro, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 9:30 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9:30 a.m. (CT). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

STATUS: Open

AGENDA:

Chair's Welcome

Old Business

Approval of minutes of the February 16, 2017, Board Meeting

New Business

1. Report from President and CEO
2. Report of the Finance, Rates, and Portfolio Committee

A. Strategic Fiber Initiative

B. Nuclear Fuel Fabrication Contract for Watts Bar Nuclear and Sequoyah Nuclear Plants

C. Uranium Feed Contract

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For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 4, 2017.

Sherry A. Quirk,

General Counsel.

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Part II

Department of Energy

Excess Uranium Management: Secretarial Determination of No Adverse Impact on the Domestic Uranium Mining, Conversion, and Enrichment Industries; Notices

DEPARTMENT OF ENERGY

Excess Uranium Management: Secretarial Determination of No Adverse Impact on the Domestic Uranium Mining, Conversion, and Enrichment Industries

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice.

SUMMARY: On April 26, 2017, the Secretary of Energy issued a determination (''Secretarial Determination'') covering continued transfers of uranium for cleanup services at the Portsmouth Gaseous Diffusion Plant. The Secretarial Determination covers transfers of up to the equivalent of 200 metric tons of natural uranium (''MTU'') in the second quarter and up to 300 MTU per quarter in the third and fourth quarters of 2017 and up to the equivalent of 1,200 MTU in 2018 and each year thereafter. For the reasons set forth in the Department's ''Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries,'' which is incorporated into the determination, the Secretary determined that these transfers will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry.

DATES: Effective April 26, 2017.

ADDRESSES: The 2017 Secretarial Determination and supporting documents are available on the Department's Web site at: *https://energy.gov/ne/downloads/excess-uranium-management.*

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Moss Herman, U.S. Department of Energy, Office of Nuclear Energy, Mailstop NE–32, 19901 Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–1788. Email: *Cheryl.Moss_Herman@Nuclear.Energy.Gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) holds inventories of uranium in various forms and quantities—including natural uranium—that have been declared as excess and are not dedicated to U.S. national security missions. Within DOE, the Office of Nuclear Energy (NE), the Office of Environmental Management (EM), and the National Nuclear Security Administration (NNSA) coordinate the management of these excess uranium inventories. Much of this excess uranium has substantial economic value on the open market. One tool that DOE has used to manage its excess uranium inventory has been to enter into transactions in which DOE exchanges excess uranium for services. This notice involves uranium transfers by the Office of Environmental Management (EM) in exchange for cleanup services at the Portsmouth Gaseous Diffusion Plant.

These transfers are conducted in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.,* ''AEA'') and other applicable law. Specifically, Title I, Chapters 6–7, 14, of the AEA authorizes DOE to transfer special nuclear material and source material. LEU and natural uranium are types of special nuclear material and source material, respectively. The USEC Privatization Act (Pub. L. 104–134, 42 U.S.C. 2297h *et seq.*) places certain limitations on DOE's authority to transfer uranium from its excess uranium inventory. Specifically, under section 3112(d)(2) of the USEC Privatization Act (42 U.S.C. 2297h–10(d)(2)), the Secretary must determine that the transfers ''will not have an adverse material impact on the domestic uranium mining, conversion or enrichment industry, taking into account the sales of uranium under the Russian Highly Enriched Uranium Agreement and the Suspension Agreement'' before DOE makes certain transfers of natural or low-enriched uranium under the AEA.

On April 26, 2017, the Secretary of Energy determined that continued uranium transfers for cleanup services at Portsmouth will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry (''2017 Secretarial Determination''). This determination covers transfers of up to the equivalent of 200 metric tons of natural uranium (''MTU'') in the second quarter and up to 300 MTU per quarter in the third and fourth quarters of 2017 and up to the equivalent of 1,200 MTU in 2018 and each year thereafter. The Secretary based his conclusion on the Department's ''Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries,'' which is incorporated into the determination. The Secretary considered, *inter alia,* the requirements of the USEC Privatization Act of 1996 (42 U.S.C. 2297h *et seq.*), the nature of uranium markets, and the current status of the domestic uranium industries, as well as sales of uranium under the Russian HEU Agreement and the Suspension Agreement.

Issued in Washington, DC, on April 26, 2017.

Raymond Furstenau,

Acting Assistant Secretary for Nuclear Energy, Office of Nuclear Energy.

The full text of the 2017 Secretarial Determination is set forth below.

Secretarial Determination for the Sale or Transfer of Uranium

Since May 1, 2015, the Department of Energy (''Department,'' ''DOE'') has transferred natural uranium and low-enriched uranium in specified amounts and transactions, subject to a determination made on that date pursuant to § 3112(d)(2) of the USEC Privatization Act, 42 U.S.C. 2297h–10(d).

After reviewing the 2017 ''Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries,'' prepared by DOE, considering responses to the Department's solicitations for public input, noting the Department's goals regarding the projects being partly supported by uranium transactions, and recognizing the Department's interest in maintaining healthy domestic nuclear industries, I have concluded that the lower rates of uranium transfers described herein are appropriate. I have therefore determined to permit transfers only at the lower rates described below.

Accordingly, I determine that the following uranium transfers will not have an adverse material impact on the domestic mining, conversion, or enrichment industry:

For the remainder of calendar year 2017, up to an additional 800 MTU contained in natural uranium hexafluoride, transferred to contractors for cleanup services at the Portsmouth Gaseous Diffusion Plant, in transfers of up to 200 MTU in the second quarter and up to 300 MTU per quarter in the third and fourth quarters.

For calendar year 2018 and thereafter, up to 1,200 MTU per calendar year contained in natural uranium hexafluoride, transferred to contractors for cleanup services at the Portsmouth Gaseous Diffusion Plant, in transfers of up to 300 MTU per quarter.

I base my conclusions on the Department's 2017 ''Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries,'' which is incorporated herein. As explained in that document, I have considered, *inter alia,* the requirements of the USEC Privatization Act of 1996 (42 U.S.C. 2297h *et seq.*), the nature of uranium markets, and the current status of the domestic uranium

industries. I have also taken into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement.

Dated: April 26, 2017.

Richard Perry,

Secretary of Energy.

Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries

April 26, 2017

Executive Summary

The Department of Energy (''Department'' or ''DOE'') currently is transferring excess uranium at a rate of 1,600 metric tons (MTU) per year in exchange for cleanup services at the Portsmouth Gaseous Diffusion Plant. A prerequisite to continuation of these transfers after May 1, 2017, pursuant to the USEC Privatization Act, is a determination by the Secretary of Energy that the planned transfers will not have an adverse material impact on the domestic mining, conversion, or enrichment industry. In support of a 2017 determination the analysis below assesses the potential impact of planned transfers going forward.

This analysis considers two different scenarios for planned transfers of natural uranium (NU) for cleanup services at Portsmouth—transfers of up to the equivalent of 1,600 MTU of NU for calendar years 2017 and thereafter (''Base Scenario''), and transfers at a rate of up to 1,200 MTU per year beginning in May 2017 until the current stockpile of natural uranium is exhausted. The Department concludes that transfers at either rate will not have an adverse material impact on the domestic mining, conversion, or enrichment industry. The Department further notes that transfers at the lower rate of 1,200 MTU per year will have lesser impacts than the Base Scenario.

In sum, for purposes of the Secretarial Determination, transfers are deemed to have an ''adverse material impact'' if a reasonable forecast predicts that an industry will experience ''material'' harm that is reasonably attributable to the transfers. This analysis compares the expected state of each industry in light of the planned transfers to the expected state of each industry without the planned transfers and examines to what degree the effects of DOE's future planned transfers would impact the industries. In this case, the Department regards an ''adverse material impact'' as a harm of real import and great consequence, beyond the scale of what normal market fluctuations would cause.

This analysis evaluates six factors for each industry: Changes to prices; changes in production levels at existing facilities; changes to employment in the industry; changes in capital improvement plans; the long-term viability of the industry; and, as required by statute, sales under certain agreements permitting the import of Russian-origin uranium. The analysis relies on various inputs, including a report prepared for the Department by consultant Energy Resources International, Inc., market data and forecasts from several sources, reports by other market consultants, and submissions in response to the Department's requests for public comment.

The uranium mining industry serves the market for uranium concentrates. DOE's transfers under the Base Scenario constitute 4% of global demand and 13% of U.S. demand for uranium concentrates in the near-term, 2017–2019. The Department forecasts, on the basis of results from multiple economic models that transfers will tend to suppress prices in the next decade by approximately $1.40 per pound, and in the near-term (2017–2019) by approximately $1.60 per pound. These impacts are about 6 or 7% of current spot market price. Transfers at the lower rate of 1,200 MTU per year are expected to have a smaller effect. The level of price suppression under either scenario is within the range of recent market price fluctuations. The impact on production and employment under either scenario in the industry will also be limited. In the long-term, the Department concludes that the effect of its transfers under either scenario would delay decisions to expand or increase production capacity but would not change the eventual outcomes in this regard.

The uranium conversion industry processes uranium concentrates into uranium hexafluoride suitable for enrichment. DOE's transfers, under the Base Scenario, constitute 4% of global demand and 14% of U.S. demand for conversion services in 2017–2019. Most conversion is sold on long-term contracts, and the sole domestic converter makes essentially all of its sales that way. The Department concludes that the term price will be relatively stable despite DOE's transfers. Although DOE transfers are projected to cause a suppression of the global spot price by about $0.30 per kgU in the next decade, about 5% of current spot prices, the domestic industry has little exposure to the spot price. As with uranium concentrates, transfers at the lower rate of 1,200 MTU per year are expected to have lesser impacts. As a result the Department concludes that its transfers under either scenario will have, at most, limited impact on employment and plans for capital improvement and expansion.

The enrichment industry provides enriched uranium, which has higher levels of U^{235} than natural uranium. For context, this analysis also discusses the effects of DOE's planned transfers of LEU, which are not part of the action being approved by the Secretarial Determination. This analysis concludes that the planned transfers of natural uranium will not have a direct effect on the enrichment industry because transfers of natural uranium only directly impact the uranium mining and conversion industries. This analysis does take into account, however, indirect effects, including the effects on operational decisions in the enrichment industry potentially caused by a larger supply of natural uranium. The Department concludes that production at existing enrichment facilities and employment in the industry are affected by the current imbalance in supply and demand, with only a limited portion of that effect being reasonably attributable to DOE transfers.

The Department has made its projections in recognition of current conditions in the market, and acknowledges that these conditions have been challenging for all three industries. Answering the analytical question posed by section 3112(d)(2) of the USEC Privatization Act requires a forecast of only the additional harm industry would suffer that can reasonably be attributed to its future planned transfers of uranium. The Department concludes that the potential effects to the domestic uranium mining, conversion, and enrichment industries from future transfers under either the Base Scenario or at the lower rate of 1,200 MTU per year will not constitute adverse material impacts.

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I. Introduction

A. Review of Procedural History

The Secretary has periodically determined whether certain transfers of natural and low-enriched uranium will have an adverse material impact on the domestic uranium industries. DOE issued the most recent Secretarial Determination under Section 3112(d) covering transfers for cleanup at the Portsmouth Gaseous Diffusion Plant and down-blending of highly-enriched uranium (HEU) to low-enriched (LEU) on May 1, 2015.[1] The 2015 Secretarial Determination and Analysis recounted in detail the history of prior DOE uranium transfers and the 2008 and 2013 DOE excess uranium inventory management plans. Introductory information provided in the 2015 Secretarial Determination and Analysis, and other information as noted below, is incorporated by reference and repeated here in part or updated as appropriate.

In preparation for this Secretarial Determination, DOE sought information from the public through a Request for Information (RFI) published in the **Federal Register** on July 19, 2016 (81 FR 46917). DOE specifically requested comment on the uranium markets and the potential effects of planned DOE uranium transfers on the domestic uranium industries. In response to the RFI, DOE received comments from a diverse group of parties representing interests across the nuclear industry, including members of the uranium mining, conversion, and enrichment industries, trade associations, nuclear utilities, local governmental bodies, and members of the public.

In addition, DOE tasked Energy Resources International, Inc., (ERI) to assess the potential effects on the domestic uranium mining, conversion, and enrichment industries of the introduction of DOE excess uranium inventory in various forms and quantities through sale or transfer during calendar years 2017 through 2026 (''2017 ERI Report'').

On March 9, 2017, DOE published a Notice of Issues for Public Comment (NIPC) in the **Federal Register** (82 FR 13106) (''NIPC''). That notice announced the public availability of comments received in response to the July 2016 Request for Information, the 2017 ERI Report, and a list of factors for analysis of the impacts of DOE transfers on the uranium mining, conversion, and enrichment industries. DOE received comments from members of the uranium mining, conversion, and enrichment industries, trade associations, and DOE contractors.[2] Citations to comments received in response to the RFI or NIPC are denoted by the commenter and page number of comments submitted; *e.g.,* ''NIPC Comment of Uranium Producer, at 3,'' is found on page 3 of ''Uranium Producer's'' comments submitted in response to the NIPC.

B. Legal Authority

DOE manages its excess uranium inventory in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.,* ''AEA'') and other applicable law. Specifically, Title I, Chapters 6–7, 14, of the AEA authorizes DOE to transfer special nuclear material and source material. LEU and NU are types of special nuclear material and source material, respectively. The USEC Privatization Act (Pub. L. 104–134, 42 U.S.C. 2297h *et seq.*) places certain limitations on DOE's authority to transfer uranium from its excess uranium inventory. Specifically, under Section 3112(d)(2)(B) of the USEC Privatization Act (42 U.S.C. 2297h-10(d)(2)(B)), the Secretary must determine that certain transfers of natural or low-enriched uranium ''will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian Highly Enriched Uranium Agreement and the Suspension Agreement'' before DOE makes these transfers under its AEA authority (hereinafter referred to as ''Secretarial Determination'' or ''Determination''). Section 306(a) of Division D, Title III of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), limits the validity of any determination by the Secretary under Section 3112(d)(2)(B) of the USEC Privatization Act to no more than two calendar years subsequent to the determination.

Section 3112(e) of the USEC Privatization Act (42 U.S.C. 2297h-10(e)), however, provides for certain transfers of uranium without the limitations of Subsection 3112(d)(2). For example, under Subsection 3112(e)(2), the Secretary may transfer or sell enriched uranium to any person for national security purposes. Nevertheless, this analysis considers the impact of transfers made pursuant to Section 3112(e) along with other DOE transfers in any determination made to assess the adverse impacts of the Department's transfers under Section 3112(d).

C. Recent DOE Transfers and Excess Uranium Inventory

DOE has detailed its transfers up to 2014 in the 2015 Secretarial Determination and Analysis.[3] Pursuant to the 2015 Secretarial Determination, DOE transferred 2,500 MTU NU equivalent in calendar year 2015, broken down as follows: 500 MTU of NU equivalent in the form of LEU transferred for down-blending services and 2,000 MTU of NU equivalent for cleanup services at the Portsmouth Gaseous Diffusion Plant. From the beginning of calendar year 2016 until now, DOE has transferred at a rate of 2,100 MTU per calendar year NU equivalent, broken down as follows: Up to 500 MTU per year of NU equivalent in the form of LEU transferred for down-blending services, with the balance transferred for cleanup services at the Portsmouth Gaseous Diffusion Plant. Transfers for cleanup services at the Portsmouth Gaseous Diffusion Plant from January through April of 2017 have been about 530 MTU.

Table 1 provides an overview of DOE's inventory of excess uranium as of December 31, 2016.

1. Current Excess Uranium Inventory

[1] See Excess Uranium Management: Secretarial Determination of No Adverse Impact on the Domestic Uranium Mining, Conversion, and Enrichment Industries, 80 FR 26366 (May 7, 2015) (hereinafter 2015 Secretarial Determination), and the analysis incorporated by reference in the 2015 Secretarial Determination (hereinafter 2015 Secretarial Determination and Analysis).

[2] The 2017 ERI Report and the comments received in response to the RFI and the NIPC are available at *http://www.energy.gov/ne/downloads/excess-uranium-management.* Some comments were marked as containing confidential information. Those comments are provided with confidential information removed.

[3] 2015 Secretarial Determination, 80 FR at 26367, 26366, 26369.

TABLE 1—OVERVIEW OF DOE EXCESS URANIUM INVENTORIES AS OF DECEMBER 31, 2016

Inventory	Enrichment level	MTU	NU equivalent million lbs. U_3O_8	NU equivalent MTU
Unallocated Uranium Derived from U.S. HEU Inventory	HEU/LEU	4.5	2.0	† 774
Allocated Uranium Derived from U.S. HEU Inventory	HEU/LEU	8.6	4.2	† 1607
U.S.-Origin NU as UF_6	NU	3,194	8.3	3,194
Russian-Origin NU as UF_6	NU	2,091	5.4	2,091
Off-spec UF_6 as LEU	LEU	1,218	5.2	2,015
Off-spec Non-UF_6	NU/LEU	221	1.6	600
Depleted Uranium Hexafluoride (DUF_6) *	DU	300,000	208–260	80,000–100,000

† The NU equivalent shown for HEU is the equivalent NU within the LEU derived from this HEU, most of which will be retained by DOE in the timeframe under consideration herein. This table includes LEU down-blended from HEU and HEU that is to be down-blended or that is in the process of being down-blended.

* DUF_6 quantity is based on uranium inventories with assays greater than 0.25% U^{235} but less than 0.711% U^{235}. The amount of NU equivalent is subject to many variables, and a large range has been shown to reflect this uncertainty. DOE has additional DUF_6 inventory that is equal to or less than 0.25% U^{235} that is not reported in this Table.

D. Transfers Considered in This Determination

This section provides an overview of the various uranium transactions considered in this analysis. The first category are transfers that DOE plans to undertake during the next two years pursuant to today's determination under section 3112(d). The second category includes other transfers that have been made or may be made that are not subject to section 3112(d), but which may be relevant to DOE's analysis of the possible impacts of transfers in the first category. The third category includes transfers that may be subject to section 3112(d) but do not impact the commercial domestic uranium markets, and are included for completeness without further consideration. The fourth category are transfers made under the Russian HEU Agreement and Suspension Agreement, which do not directly involve DOE, but are considered as required under section 3112(d).

1. Planned Transfers Covered by This Secretarial Determination Under Section 3112(d)

Today's determination concludes that transfers of natural uranium for cleanup services at the Portsmouth Gaseous Diffusion Plant at the rate of 1,200 MTU per year will not cause an adverse material impact on the domestic uranium industries.

Through its Office of Environmental Management (EM), DOE contracts with Fluor- BWXT Portsmouth for cleanup services at the Portsmouth Gaseous Diffusion Plant. This work involves decontamination and decommissioning of approximately 415 facilities (including buildings, utilities, systems, ponds, and infrastructure units) that make up the former uranium enrichment facility. In recent years, work under this contract has been funded through both appropriated dollars and uranium transfers. As the value of transferred uranium changes depending on market prices and on the Department's decisions regarding how much uranium to transfer, uranium can constitute a greater or lesser proportion of the total funding.

This analysis considers planned transfers of natural uranium hexafluoride for cleanup services at the Portsmouth Gaseous Diffusion Plant under two scenarios. The first scenario consists of continued transfers at the current rate of 1,600 MTU per year until the Department's natural uranium supplies are exhausted in 2020. The second scenario consists of transfers for the remainder of calendar year 2017 and thereafter, at a rate of 1,200 MTU per year, until the Department's uranium supplies are exhausted in 2021. This scenario accounts for transfers that have already occurred in 2017 at the higher rate of 1,600 per year and initiates the lower rate of 1,200 MTU per year beginning May 2017.

2. Uranium Transfers Considered But Not Covered by This Secretarial Determination

In addition to transfers described above, this analysis considers several transfers that are not covered by today's determination, for various reasons. Although some of these transfers are not subject to section 3112(d), this analysis considers the potential impacts on domestic industries and the expected impacts of those yet to be carried out, to provide a complete picture of the Department's uranium transfers.[4]

i. NNSA Transfers for HEU Down-Blending

As discussed in the NIPC, NNSA transfers of LEU for HEU down-blending services were determined to serve a national security purpose in supporting the Department's nonproliferation goals and are thus covered by Section 3112(e)(2). Pursuant to Section 3112(e), these transfers for down-blending purposes no longer require a Secretarial Determination under Section 3112(d). However, this analysis still considers proposed NNSA LEU transfers of 500 MTU per year from 2017 to 2019 for the purposes of assessing the impact of DOE's natural uranium transfers for EM cleanup services at the Portsmouth Gaseous Diffusion Plant.

ii. Depleted Uranium Hexafluoride to Energy Northwest

This analysis considers uranium transfers made in the past that continue to displace commercial supply. In 2012 and 2013, DOE transferred 9,075 MTU of high assay depleted uranium hexafluoride (DUF_6) tails to Energy Northwest. Energy Northwest then contracted with USEC, Inc.—now known as Centrus Energy Corp.—to enrich the tails to LEU. Energy Northwest sold most of the resulting LEU to TVA, for use in its reactors between 2015 and 2022. Energy Northwest retained the remaining LEU for us in its own reactors. DOE accepted title to 8,582 MTU of secondary tails resulting from the enrichment of the high-assay tails.

iii. Depleted Uranium Hexafluoride to Global Laser Enrichment and Off-Spec Inventory Transfers

This analysis also considers certain planned and future DOE transfers which are outside of the two-year window of

[4] The 2015 Secretarial Determination also considered uranium transfers under the TVA BLEU program, a program dating from 2005 where TVA has been blending off-spec HEU from the NNSA for use in its reactors. Since 2015, NNSA has not finalized plans for additional down-blending of off-spec HEU, and therefore there are no further transfers of material associated with the TVA BLEU program in the 2017 to 2026 time period. 2017 ERI Report, 22, 23.

the Secretarial Determination. In July 2013, DOE issued a Request for Offers (RFO) for the sale of depleted and off-specification uranium hexafluoride inventories. These inventories include large amounts of high-assay and low-assay DUF_6, approximately 538 thousand MTU of DUF_6 in over 65,000 cylinders located, and smaller amounts of ''off-spec'' (meaning material that does not meet American Society for Testing and Materials specifications) uranium hexafluoride, approximately 1,106 MTU contained in 239 cylinders, located at DOE's Portsmouth and Paducah sites.

Previously, in 2008, a DOE contractor issued a Request for Proposals for the sale and disposition of off-specification, non-UF_6 uranium located at Portsmouth. This inventory consists of approximately 4,461 MTU of uranium in various forms, including metal, oxides, fluoride, and aqueous solution.

Following the July 2013 RFO, DOE entered into negotiations with GE-Hitachi Global Laser Enrichment, LLC (GLE) for the sale of the DUF_6, which resulted in an agreement in November 2016. Subject to the terms and conditions of the agreement, in 2024, DOE expects to begin annual transfers of depleted uranium to GLE, in an amount equal to 2,000 MTU of NU equivalent. GLE would enrich the depleted uranium to NU at a new laser enrichment facility it intends to build near the Paducah site.

Also in connection with the July 2013 RFO, DOE announced in November 2013 that it would enter into negotiations with AREVA for the sale of off-spec uranium hexafluoride in the form of LEU.

To date, the proposed sales of off-specification LEU and off-specification non-UF_6 have not been concluded. If concluded, DOE expects that off-spec LEU in an amount equal to approximately 456 MTU as natural uranium equivalent would enter the market in 2020, and off-spec non-UF_6 in an amount equal to approximately two MTU as NU equivalent would enter the market in 2021 or 2022.

iv. Uranium Transfers for Research Applications and Medical Isotope Production

DOE also transfers LEU enriched to assays between 5 and 20 wt-% U^{235} (hereinafter high-assay LEU) for domestic and foreign research applications. Most of these transfers are conducted in accordance with section 3112(e) of the USEC Privatization Act, such as transfers to domestic and foreign research reactors; however, some may fall within section 3112(d), such as transfers for use in commercial research and isotope production applications. DOE issued two Secretarial Determinations under section 3112(d) to cover transfers of high-assay LEU in connection with the development and demonstration of, and the establishment of production capabilities for, respectively, the medical isotope molybdenum-99.[5]

In general, these transfers of high-assay LEU do not contribute to any impacts that DOE uranium transfers overall have on domestic uranium industries because the transfers do not displace commercially supplied uranium, conversion, or enrichment from the market. No commercial supplier is currently capable of providing high-assay LEU, so a research reactor operator would not be able to replace DOE-sourced material by buying uranium hexafluoride and having it enriched to those levels. In general, it would also be technologically infeasible for research reactor operators to replace DOE-sourced high-assay LEU by converting the reactors to use commercial-assay LEU and retain the ability of the reactor to be used for research. Even if these reactors could use LEU (either at high or low assay) from commercial suppliers, the amounts are extremely small. Thus, DOE's supply of high-assay LEU for research applications and medical isotope production has at most a *de minimis* effect on the commercial uranium markets, and this analysis therefore does not consider these transfers further.

3. Transactions Under Russian HEU Agreement and Suspension Agreement

As explained above, section 3112(d) of the USEC Privatization Act states that a Secretarial Determination must take into account the sales of uranium under two agreements relating to uranium from the Russian Federation: The Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, Feb. 18, 1993 (''Russian HEU Agreement''), and the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 57 FR 49220, at 49235 (Oct. 30, 1992) (''Suspension Agreement'').

The 2015 Secretarial Determination and Analysis detailed the history of transfers which have taken place under the Russian HEU Agreement, the last of which took place in 2013, and those which may occur in the future under the Suspension Agreement. The specific volumes of uranium, conversion, and enrichment allowed into the United States from Russia under the Suspension Agreement are discussed below. Material imported under the Suspension Agreement would not involve DOE transfers but would be accounted for in the various projections and models of the uranium markets that are considered in this analysis.

Two developments with respect to the Suspension Agreement since the 2015 Secretarial Determination bear mention. First, the Suspension Agreement requires the Department of Commerce to adjust the export limits in 2016 and 2019 to take account of changes in projected reactor demand for uranium, and Commerce proposed such adjustments in September 2016 and requested comment from interested parties. Letter from Sally C. Gannon, International Trade Administration, Department of Commerce, Sept. 9, 2016. The proposed adjusted export limits are, on average, 6.6 percent above current limits over the remaining years of the agreement. Commerce has not yet issued final adjusted export limits.

Second, the Suspension Agreement requires Commerce to conduct sunset reviews in 2011 and 2016. In February 2017, the Department of Commerce initiated the fourth sunset review. 82 FR 9193 (Feb. 3, 2017). Commerce expects to issue final results of this review within 120 days of publication of the initiation. In the previous five-year review, Commerce determined that termination of the Suspension Agreement and underlying anti-dumping investigation would likely lead to a continuation or recurrence of dumping and therefore declined to terminate the Agreement. 76 FR 68404, at 68407 (Nov. 4, 2011). DOE's analysis assumes that the Suspension Agreement will remain in effect through 2020.

II. Overview of Uranium Markets

The nuclear fuel market consists of four separate industries: Mining/milling, conversion, enrichment, and fabrication. These industries interact in complicated and sometimes counterintuitive ways. In order to analyze the effect on the various industries of introducing a given amount of uranium into the market, it is necessary to understand how uranium is processed into nuclear fuel, how the different aspects of this process interact,

[5] See Excess Uranium Management: Secretarial Determination of No Adverse Impact on the Domestic Uranium Mining, Conversion, and Enrichment Industries, 80 FR 65727 (October 27, 2015), and Excess Uranium Management: Secretarial Determination of No Adverse Impact on the Domestic Uranium Mining, Conversion, and Enrichment Industries, 81 FR 1409 (January 12, 2016).

and how the consumers of uranium—nuclear reactor owners/operators—procure uranium. This section provides an overview of these industries and markets, beginning with the process for producing nuclear fuel from uranium ore. The 2015 Secretarial Determination and Analysis discussed the primary players and drivers of the U.S. uranium industries. As in section I of this analysis, the information in this section incorporates by reference and repeats in part the information provided in the 2015 Secretarial Determination and Analysis, updated as appropriate.

A. The Nuclear Fuel Cycle

In order to be useful as fuel for a reactor, uranium must be in a specific chemical form, it must have the correct isotopic concentration, and it must be fabricated into the correct physical shape and orientation.

1. Mining

The first step in the nuclear fuel cycle is mining. Uranium is relatively common throughout the world and is found in most rocks and soils at varying concentrations. There are two primary methods of mining uranium: Conventional and in-situ recovery. Which method is used for a particular deposit depends on the specific characteristics of the deposit and surrounding rock. Conventional mining can involve either open pit or underground removal of uranium ore. Once removed from the ground, the uranium ore must be transported to a mill for processing. Many mining operations are located close to mills; where mines are close together, one mill may process ore from several different mines. Once at the mill, the ore is crushed and chemically treated to remove the uranium from the other minerals, a process called ''leaching.'' The solids are then separated from the solution and dried. The final result is a powdered uranium oxide concentrate, often known as ''yellowcake'' and predominately made of triuranium octoxide, or U_3O_8. This powdered yellowcake can be packed in drums and shipped for the next stage of processing.

An alternative mining process is known as in-situ recovery (ISR). In ISR mining, the uranium ore is not removed from the ground as a solid. Instead, an aqueous solution—either acid or alkali—is pumped into the ground through injection wells, through a porous ore deposit, and back out through production wells. As the solution moves through the ore deposit, the uranium in the ore dissolves or leaches into the solution. Once the uranium-laden solution is pumped out, it is pumped to a treatment plant where uranium is recovered and dried into yellowcake. In order to maintain a stable rate of production, wellfields must be continually developed and placed into production.

There are several key differences between conventional and ISR mines. ISR mining typically has lower costs, both capital and operational. ISR mines also have a shorter lead-time for development. There are other advantages compared to conventional mining such as decreased radiation exposure for workers, reduced surface disturbance, and reduced solid waste. However, ISR mining can only extract uranium located in deposits that are permeable to the liquid solution used to recover the uranium, and the permeable deposit must have an impermeable layer above and below to prevent the solution from leaching into groundwater. To the extent that uranium is located in other types of deposit, ISR mining may not be possible.

2. Conversion

The second step in the nuclear fuel cycle is conversion. When yellowcake arrives at conversion facilities it may contain various impurities. Conversion is a chemical process that refines the uranium compounds and prepares it for the next stage.

As discussed in the next section, most nuclear reactors require uranium that is enriched in the isotope U^{235}.[6] The enrichment process typically requires uranium to be in a gaseous form. To meet this need, U_3O_8 is converted into uranium hexafluoride (UF_6), which sublimes—*i.e.* converts directly from solid to gas—at a temperature (at normal atmospheric pressure) of approximately 134 °F (56.5 °C). The UF_6 is then loaded into large cylinders and shipped to an enrichment facility.

3. Enrichment

The third step in the nuclear fuel cycle is enrichment. As found in nature, uranium consists of a mixture of different uranium isotopes. The two most significant isotopes are U^{235} and U^{238}. The relative concentration of the various isotopes of uranium in a given amount is referred to as the isotopic concentration or ''assay.''[7] NU consists of approximately 0.711% U^{235}, 99.283% U–238, and trace amounts of U–234.

Nuclear reactors typically require uranium that is enriched in the isotope U^{235}, meaning that it has a higher concentration of U^{235} compared to natural uranium. Commercial light water reactors, which are the most common type of nuclear reactor, typically require an assay of 3% to 5% U^{235}. Uranium enriched in the isotope U^{235} is referred to as LEU if the assay is less than 20% but above 0.711%, and as HEU if the assay is greater than 20%.

There are many different enrichment processes, but only two have been used commercially: Gaseous diffusion and gas centrifugation. Currently, all commercial enrichment services use gas centrifuge technology; the last commercial-scale gaseous diffusion facility ceased operating in 2013. After UF_6 arrives from a conversion facility, this UF_6 or ''feed'' is introduced into the enrichment centrifuges. The centrifuges exploit the slight mass difference between U^{235} and U^{238} atoms and separate the isotopes into varying levels of enrichment. Two streams of material are produced: Product and tails. The product is the enriched UF_6 or LEU output (also referred to as Enriched Uranium Product or EUP), which is pumped into a 2.5 ton cylinder and shipped to a fabrication facility. To achieve a concentration increase from 0.711% to 5% in a centrifuge, material passes sequentially through many stages of centrifugation.

Just as the product stream has a higher proportion of U^{235} to U–238 than the original feed, the other stream, the tails, has a lower proportion of U^{235} to U^{238}. This material is sometimes referred to as ''depleted.'' The assay of U^{235} in the tails from an enrichment process depends on what concentration of U^{235} was needed in the enriched product and how much natural uranium was used as feed. Typical tails assays range from 0.1 wt-% to 0.4 wt-%. Tails are pumped into large (typically 10 or 14 ton) cylinders and then stored on-site at the enrichment facility for eventual disposal or other use. Some depleted uranium may be of value to the market depending on the assay level, cost to re-enrich and other market conditions.

Enrichment services are sold in ''separative work units'' (SWU). One SWU is the amount of effort it takes to enrich uranium of a given isotopic concentration to a specified enriched level with a specified tails assay for the depleted uranium.

4. Fabrication

The final step in the process is fabrication. Almost all commercial nuclear reactors require fuel to be in the form of uranium dioxide (UO_2). At the fabrication facility, the enriched UF_6 is converted into UO_2 powder, and then formed into small ceramic pellets. These

[6] Some nuclear reactors, particularly pressurized heavy water reactors, may use natural uranium.

[7] The measure of assay is sometimes referred to in terms of ''weight-percent'' or ''wt-%.''

pellets are then loaded into metal tubes and attached together to form fuel assemblies. Fuel design is reactor specific, and thus each fuel assembly is manufactured to the unique specifications of the reactor operator. Although fabrication is an important step in the fuel cycle, this analysis does not cover effects in the fabrication market.

5. Secondary Supply

Uranium that undergoes the above-described four steps without any intermediate use is generally termed ''primary supply.'' However, there are other sources of uranium available in the market. Uranium from these other sources is collectively known as ''secondary supply'' and may include government inventories of uranium, commercial inventories (some strategic and some resulting from shutdown nuclear power plants), uranium produced by re-enriching depleted tails, and uranium resulting from enricher underfeeding. An additional source of secondary supply is from recycled uranium and plutonium either from reprocessing of commercial spent fuel or from weapons-grade plutonium disposition. The product of these processes enters the fuel cycle and is fabricated into mixed oxide (MOX) fuel.

Most secondary supply comes from utilization of excess enrichment capacity by underfeeding or re-enriching tails. Due to technical constraints, enrichers generally cannot easily decrease capacity that is already constructed and operating. If an enricher were to shut down a centrifuge that is currently spinning, it may not be possible to restart the centrifuge. Doing so would risk damaging the machine and destroying the substantial capital investment. As a result, enrichers that have unsold capacity will tend to apply the excess enrichment work in one of two ways.

First, enrichers can apply extra separative work to a given amount of uranium feed material, thus extracting more of the U^{235}. This is known as ''underfeeding'' because it enables the production of a given amount of enriched product with a smaller amount of feed material. Normally, a purchaser of enrichment services seeking a specific amount of enriched product would need to determine (1) how much natural uranium feed to provide and (2) how much SWU to apply to it. Increasing the amount of enrichment services has a cost, but the additional work will extract more of the U^{235} content of the feed material so that less feed material is needed, at less cost. The relationship between the prices of uranium concentrates, conversion, and enrichment can be used to determine the amount of feed and SWU—and thus also the resulting tails assay that will lead to the lowest cost per kilogram of enriched product. This is known as the ''optimal tails assay.'' If an enricher has excess capacity, it may choose to feed in a smaller amount of natural uranium and apply more SWU to that material than was purchased. Thus, the end result is the customer's desired amount of enriched product plus depleted tails as well as the natural uranium that was delivered to the enricher but not fed into the enrichment process. The enricher can then sell this excess natural uranium on the open market.

Second, enrichers can feed depleted tails back into the enrichment process and apply additional separative work to them. This is known as re-enrichment of tails. Over time, depleted tails may accumulate and an enricher may choose to feed them back into the enrichment process. These tails can be enriched up to the level of natural uranium (0.711%) or higher. The enricher may then sell the resulting natural uranium or LEU on the open market.

6. Note on Units

Uranium concentrates are generally measured in pounds U_3O_8, conversion services are generally measured in kgU as UF_6, and enrichment services are measured in SWU.

It is worth noting that the measures of uranium concentrates and conversion services are not identical for several reasons. In addition to the fact that one is denominated according to U.S. customary units and the other is denominated under the international system of units (SI), the measure of uranium concentrates refers to the mass of U_3O_8 whereas the conversion metric refers only to the mass of the uranium atoms. Only about 85% of the mass of U_3O_8 consists of uranium. Thus, one kilogram of U_3O_8 contains approximately 0.848 kgU. Furthermore, converting between pounds U_3O_8 and kgU as UF_6 must take into account an estimated 0.5% loss during the conversion process. Taking all this into account, one pound U_3O_8 is equivalent to 0.383 kgU as UF_6, and one kgU as UF_6 is equivalent to 2.61 pounds U_3O_8.

Converting between uranium concentrates or conversion services and enrichment is more difficult because the amount of SWU necessary to produce a given amount of product depends on the desired product assay, the feed assay, and the tails assay. An example will serve to illustrate the significance of different assumptions. Assuming a tails assay of 0.30%, enriching 1,000 kgU as UF_6 of natural uranium to an assay of 4.50% would require approximately 609.7 SWU and would yield 97.9 kgU of enriched uranium; if a tails assay of 0.20% is used instead, enrichment would require approximately 913.9 SWU and would yield 118.8 kgU of enriched uranium.

DOE typically describes its uranium inventory in terms of MTU for natural uranium and MTU ''natural uranium equivalent'' for depleted and enriched uranium. These terms have a slightly different meaning depending on the form. For natural UF_6—*i.e.* with an assay of 0.711%—1 MTU would represent 2,610 pounds U_3O_8, 1,000 kgU as UF_6 of conversion services, and 0 SWU. For enriched or depleted UF_6, the amount of natural uranium equivalent depends on the assay. For depleted UF_6, DOE calculates natural uranium equivalent as the amount of natural uranium product that could be produced by re-enriching the depleted material. For the purposes of this analysis, DOE assumes the enrichment process would use a tails assay of 0.20%. As an example, 1,000 MTU of DUF_6 with an average assay of 0.40% would yield approximately 390 MTU natural uranium equivalent. For LEU, DOE calculates natural uranium equivalent as the amount of natural uranium that would be needed as feed material to produce the LEU, given the assay of the LEU and assuming a tails assay of 0.20% and a feed assay of 0.711%. For LEU resulting from down-blending of HEU, DOE then subtracts out the amount of natural uranium feed—''diluent''—that is necessary to down-blend the HEU to the desired product assay. The amount of diluent required is typically equivalent to approximately 10% of the natural uranium that would be needed as feed for enrichment. This subtraction is appropriate for purposes of section 3112(d) analysis to indicate how much natural uranium a given amount of LEU would displace from the market. Because DOE's contractor procures diluent on the market (rather than from DOE inventory) in order to produce the transferred LEU, the transfer displaces that much less commercially supplied natural uranium.

B. The Uranium Markets

1. The Uranium Markets Are Separate, But Interrelated

Uranium concentrates, conversion services, and enrichment services are traded in separate markets, with the demand for each tied to both technical specifications and utility procurement strategies. Prices for uranium

concentrates are typically quoted in terms of dollars per pound U_3O_8. Prices for conversion services are typically quoted in terms of dollars per kilogram uranium (kgU). Prices for enrichment services are typically quoted in terms of dollars per SWU.

A typical transaction may involve a single purchaser purchasing a given amount of uranium concentrate through a contract directly with the mining company. The uranium concentrate is typically delivered directly to a conversion facility rather than to the purchaser. The purchaser will also enter into a separate contract for conversion services. The terms of this contract will require the purchaser to deliver U_3O_8 to the converter, and the converter will provide UF_6 in return. The UF_6 will then be shipped directly to an enricher. As with conversion, the purchaser will enter into a separate contract for SWU from an enricher. Contracts terms vary, but this contract will likely require the purchaser to deliver a specific amount of natural UF_6 feed and the enricher to deliver a specific amount of UF_6 enriched to the desired assay. This LEU will typically be delivered directly to the fabricator to be made into nuclear fuel.

Although there are separate markets for each step in the process, the different steps are sometimes combined. It is possible to buy natural UF_6, which would reflect both the uranium concentrate and the conversion services. Similarly, it is possible to buy enriched UF_6—usually known as enriched uranium product (EUP)—which would reflect all three steps. The price for these products is typically developed by adding the cost of the various steps together. Thus, the price of EUP would be based on the price of an equivalent amount of uranium concentrates, conversion, and enrichment. In practice, however, the price of a product material, like EUP or natural UF_6, may occasionally differ somewhat from the sum of the input prices. In addition, the price of a product material reflects transaction and shipping costs needed to move material through the various steps.

In addition, even though the three components are traded separately, there is some interrelationship between the prices. Since optimal tails assay is a function of the relative price of uranium concentrates, conversion, and SWU, changes in one price can lead to shifts in demand and supply in the other markets. Similarly, excess enrichment capacity used for underfeeding or re-enrichment of tails increases supply of uranium concentrates and conversion services. Thus, changes in enrichment supply may contribute to changes in uranium concentrate and conversion prices.

2. Uranium Is Fungible

Uranium at each stage of the fuel cycle is fungible. As long as the basic characteristics like form and assay are the same, one kilogram of material is essentially the same as any other.[8] Accounting mechanisms allow the ownership of each kilogram of material to be traceable, and they also allow ownership to be exchanged freely without physically manipulating the material.

A simple example illustrates the types of transaction that this fungibility enables. After U_3O_8 is converted into UF_6, it will typically be shipped to a specific enrichment facility. If the uranium was mined and converted in North America, it will typically be sent to an enricher in North America. However, the purchaser is not necessarily required to purchase enrichment services from the company whose facility the material is shipped to. Instead, the purchaser may be able to exchange ownership of an amount of UF_6 located at a North American enrichment facility with an equivalent amount located at a facility in Europe. This is referred to as a ''book transfer.''

An entity can also sell conversion services or enrichment services without actually physically converting or enriching any material. A person that owns enriched UF_6 may enter into a contract to sell SWU whereby it provides the desired amount of enriched UF_6 in exchange for the cost of the SWU and a specific amount of natural UF_6 feed. A person can also use natural UF_6 to sell conversion services by exchanging it for the cost of the conversion services plus the equivalent amount of U_3O_8.

3. The Uranium Markets Are Global

Uranium, conversion, and enrichment markets are generally global in nature. Purchasers are able to buy from suppliers worldwide and vice versa. Pricing for uranium concentrates and enrichment are essentially the same worldwide. Shipping costs are relatively low compared to other components of the prices, and the fungibility of the material allows suppliers and purchasers to minimize shipping costs through book transfers.

Although conversion services also trade on a worldwide market, in recent years there has been a persistent difference between prices in North America and those in Europe. DOE believes this stems from a geographical imbalance in conversion capacity relative to enrichment capacity. There is more conversion capacity in North America than enrichment capacity, and conversely in Europe there is more enrichment than conversion capacity. Consequently, there is a regular net flow of conversion services from North America to Europe. Meanwhile, it seems likely that the cost of shipping is larger relative to the conversion price than it is relative to the price of uranium or enrichment—mainly because conversion is the least costly input among the three. DOE believes the price difference between North American conversion and European conversion reflects simply the additional cost of shipping converted material from North America to Europe, together with the fact that net flow is from North America to Europe.

C. The Nature of Demand for Uranium

1. Utility Use and Procurement of Uranium

The vast majority of uranium in commercial use is fuel for commercial power generation. According to the International Atomic Energy Agency (IAEA), there are 449 commercial reactors operating worldwide, 99 of these are in the United States.[9] The total installed electricity generation capacity of all reactors worldwide is 392,232 MW_e (megawatt electrical), 99,869 MW_e of which is from U.S. reactors. *Id.*

Nuclear reactors typically provide what is known as ''baseload'' electricity supply. This means that nuclear reactors generally operate close to their full practical capacity continuously. Thus, the amount of uranium needed for each reactor in a given year does not generally fluctuate with electricity use patterns. It depends instead on the total capacity of the reactor and the fuel reload schedule. Reload schedules vary, but reactors typically must reload a portion of the total fuel in the core every 18 to 24 months.

According to the World Nuclear Association (WNA), a typical 1,000 MW_e light water reactor operating today requires approximately 24 MTU of LEU at an assay of 4% each year. At a tails assay of 0.25%, this corresponds to approximately 140,000 SWU of

[8] Other important characteristics include the presence and concentration of contaminants, some of which can render material unusable as nuclear fuel. Industry standards specify the acceptable levels of contamination.

[9] *See* IAEA, ''Power Reactor Information System,'' March 2017, *http://www.iaea.org/pris/* (accessed March 24, 2017).

enrichment, 195,000 kgU of conversion services, and 510,000 pounds U_3O_8.[10]

For a given reactor operator, this predictability enables the operator to purchase uranium, conversion, and enrichment on long-term contracts. These contracts often have first delivery as much as five years in the future and can extend as long as ten or even fifteen years from the contract date. In addition, because shutting down a reactor for refueling is a complex and carefully orchestrated process that requires extensive planning, a reactor operator generally has strong incentives to ensure well in advance of each refueling that the reactor will be sufficiently supplied with fuel. Long-term contracts help meet that goal by providing a reactor operator guaranteed quantities of supply. Consequently, the vast majority of purchases of uranium concentrates, conversion, and enrichment are through term contracts.

A utility's procurement goal is to secure supply of nuclear fuel from reliable sources at competitive prices. When purchasing fuel, utilities generally seek bids for nuclear fuel products and services and assess those bids against the current portfolio of contracts and inventory, balancing a number of objective and subjective criteria related to security of supply as well as cost. To enhance reliability, U.S. utilities may seek a diversity of suppliers in uranium, conversion and enrichment. U.S. utilities are generally able to purchase from suppliers worldwide, subject to trade and export licensing constraints or trade remedies such as the Russian Suspension Agreement. Utility fuel purchase contracts must also be consistent with U.S. non-proliferation commitments such as those in 123 Agreements and export-related regulations. There is currently no U.S. policy regarding reliance on foreign suppliers providing nuclear fuel to U.S. utilities.

2. Uranium Requirements

As noted above, the amount of fuel necessary to keep a reactor operating is relatively predictable. Although there is always the possibility of unplanned outages, reactor operators generally know how much enriched uranium they will need. The amount of uranium needed to fuel operating reactors is generally referred to as ''requirements.'' Small uncertainties in predictions about requirements are possible in the short run because an operator can vary its need for fuel to some degree by changing operating conditions.

Aggregate requirements are also relatively predictable. However, long-term projections of future requirements must take into account changes in requirements from short-term outages, permanent shutdowns, and new reactor construction. Unforeseen events, such as an unplanned shutdowns, can affect the accuracy of long-term projections. Various entities develop and publish projections of future uranium requirements based on different assumptions about the rates of these changes, as well as different assumptions about operating conditions like reload schedules and fuel utilization (''burnup''), and about the possibility of unplanned outages or other temporary fluctuations in nuclear fuel use. These requirements forecasts typically are based only on the nuclear fuel expected to be used in operating reactors; they do not include purchases of strategic or discretionary inventory. Other forecasts may include these strategic or discretionary purchases—these may be referred to as ''demand'' forecasts.

3. Requirements Versus Demand

Demand for uranium, conversion, or enrichment is generally not the same as reactor requirements in a given year. Some sources of demand are either in excess of or unconnected to reactor requirements. For example, many reactor operators hold strategic inventories of uranium beyond their requirements. This material provides flexibility in the event of a supply disruption. Different operators may have different strategic inventory policies, and those policies will shift over time. Changes in the level of strategic inventories held by individual reactors can produce additional demand or remove demand. Demand from reactor operators purchasing uranium for strategic inventory is commonly referred to as ''discretionary demand.''

In addition to reactor operators purchasing in excess of demand, there are a number of market participants that do not operate reactors at all. These include traders, brokers, and investment funds. These entities may purchase uranium when prices are low and resell it under future delivery contracts. Discretionary purchases are likely to be driven by spot price considerations and can constitute a large percentage of spot market purchases and thus can be a large driver of spot market price indicators. These activities mostly involve only uranium concentrates. Discretionary purchasing has a larger impact on uranium demand than demand for conversion and enrichment.

Finally, changes in optimal tails assay can affect demand in a given year. Estimates of future reactor requirements typically assume a specific tails assay for enrichment. However, if enrichment prices change relative to uranium concentrate and conversion prices, some purchasers may have flexibility to specify a different tails assay for enrichment. This changes the amount of uranium concentrates, conversion, and SWU that are necessary to produce a given amount of fuel.

4. Price Elasticity of Demand

Price elasticity of demand is an economic measure that shows how the quantity demanded of a good or service responds to a change in price. If purchasers are highly responsive to changes in price, demand is relatively elastic. If purchasers are weakly responsive to changes in price, demand is relatively inelastic. If purchasers demand the same amount regardless of the price, demand is perfectly inelastic.

In general, demand for uranium, conversion, and enrichment are relatively inelastic. Since requirements are largely fixed, changes in price have a weak effect on demand. However, uranium markets exhibit different degrees of elasticity on different time frames.

i. Short Term

In the short term, DOE expects that demand is more elastic than in the medium and long terms. Some of the behaviors discussed in the previous section are responsive to short term changes in price. Traders and investment funds are more likely to make speculative purchases when prices are low. Similarly, large-scale strategic buying, as China is doing, has corresponded with a period of very low prices. It seems likely that these purchases would decrease if short term uranium prices increased substantially. Utilities may also make strategic purchases at times of low spot prices but these rising prices may incent utilities to look at security of supply and their long-term fuel procurement plans as rising prices could signal a perception that supplies will be more scarce in the future.

As mentioned above, these behaviors are much more prevalent in the uranium concentrates markets. Demand in the conversion and enrichment markets may therefore exhibit less elasticity in the short term than the uranium market.

[10] *See* WNA, ''The Nuclear Fuel Cycle,'' March 2017, *http://www.world-nuclear.org/information-library/nuclear-fuel-cycle/introduction/nuclear-fuel-cycle-overview.aspx/* (accessed April 5, 2017).)

ii. Medium and Long Term

DOE expects that demand in the medium and long term is less elastic than in the short term. A change in the relative prices of uranium versus enrichment will affect the relationships between those markets by changing the optimal tails assay, potentially affecting demand in all three markets. A change in price may affect the term and type of fuel contracts that utilities seek—longer-term contracts versus shorter-term contracts and the mix of pricing mechanisms in those contracts—market-based versus fixed price or base price-escalated contracts. However, in the longer-term, these changes are not likely to affect overall requirements significantly.

In the long-term, elasticity of demand for nuclear fuel would reflect decisions about whether to construct new reactors or shut down existing reactors in response to long-run prices for fuel. This contribution to elasticity is likely to be small because fuel costs are a small portion (~19.5 percent)[11] of the overall cost of nuclear power. Even a large increase in fuel price would be unlikely to significantly affect decisions about new reactor construction. Meanwhile, for existing reactors the capital costs are ''sunk.'' And ongoing variable fuel costs for nuclear power are, at current prices, lower than for most other types of generation.[12] Thus, among existing plants, it would take a very large increase in the cost of fuel to influence significantly a decision about whether to shut down a reactor early.

Demand for uranium is not constant. However, the changes in long-term demand are unlikely to be responses to uranium price signals. For these reasons, the analysis below will assume that medium- and long-term demand has low elasticity.

D. The Nature of Uranium Supply

1. Primary Versus Secondary Supply

As explained above, supply of uranium concentrates, conversion, and enrichment includes both primary and secondary supply. According to ERI, global supply of uranium concentrates in 2016 was approximately 198 million pounds U_3O_8. 2017 ERI Report, 11. Secondary supply is expected to total approximately 40 million pounds, about 20% of the total. Over half of secondary supplies of uranium concentrates come from enricher underfeeding and tails re-enrichment. Other sources of secondary supply include DOE inventory, plutonium/uranium recycle (MOX), and other commercial inventories. 2017 ERI Report, 10. Prior to 2014, the natural uranium component of LEU delivered under the Russian HEU Agreement represented a significant source of secondary supply. This program ended in 2013.

As with enrichment, conversion supply includes both primary production and secondary supplies. For conversion services, ERI expects that total supply in 2016 was approximately 60 million kgU as UF_6, with secondary supply representing about 25%. 2017 ERI Report, 14. As with uranium concentrates, over half of secondary supplies of conversion come from enricher underfeeding and tails re-enrichment. Other sources of secondary supply include DOE inventory, plutonium/uranium recycle (MOX), and other commercial inventories. 2017 ERI Report, 14.

For enrichment services, ERI expects that total supply in 2016 was approximately 63 million SWU, with secondary supply representing between 4 and 5 million SWU or about 8%. 2017 ERI Report, 17. Unlike uranium concentrates and conversion services, underfeeding and tails re-enrichment do not constitute a secondary supply of enrichment because those processes utilize enrichment capacity. Sources of secondary supply of enrichment include DOE inventory, plutonium/uranium recycle (MOX), and other commercial inventories. *Id.* However, a significant portion of excess supply is directed toward uranium production, reducing enrichment supply by about 10 million SWU.

2. Global Characteristics

Many foreign governments (other than the United States, Canada and Australia) either own or exert significant control over nuclear fuel assets. Notably, all operating enrichment plants are fully or partially owned by foreign governments. U.S. suppliers are generally able to sell their products and services globally, with the key exceptions of countries such as Russia and China. For strategic reasons, Russia and China choose to power their reactors only with their domestic resources or through carefully curated strategic partnerships.

3. Price Elasticity of Supply

Price elasticity of supply measures how the quantity supplied of a good or service responds to a change in price. If suppliers are highly responsive to changes in price, supply is relatively elastic. If suppliers are weakly responsive to changes in price, supply is relatively inelastic.

Enrichment services are relatively inelastic, and conversion services are complicated by pricing phenomena described below. With respect to uranium concentrates, the level of elasticity in the uranium markets varies depending on the time frame, just as demand elasticity does.

i. Short Term

In the short term, supplies of uranium concentrates from primary producers are relatively inelastic. There is some limited capability for mines to decrease production. Conventional mines may choose to continue operation and stockpile uranium ore without milling it into yellowcake. ISR mines require constant development of new wellfields; these mines may slow production gradually by slowing wellfield development. These measures may take many months. Thus, in the short term, mines will be weakly responsive to changes in price. In contrast, secondary sources of uranium concentrates may respond more to changes in price. Underfeeding and tails re-enrichment, for example, depend on the relationship between SWU and uranium concentrate prices. In the short-term, enrichers cannot increase or decrease capacity, but they can quickly shift how much capacity is devoted to underfeeding versus primary enrichment.

Primary supply of conversion services is relatively inelastic in the short term. Conversion plants typically have high fixed production costs. Thus, there is relatively little incentive to change production in response to changes in price. (As discussed below, conversion supply has fluctuated in recent years; but those changes were not necessarily caused by price changes.) Secondary supplies of conversion, however, are more able to respond to changes in price. Underfeeding and tails re-enrichment results in natural UF_6, which includes both uranium concentrates and conversion services. Since the price of uranium concentrates is a larger proportion of the value of that UF_6, secondary supplies of conversion from these two sources can be expected to respond more strongly to the uranium

[11] NEI, *Nuclear by the Numbers* (2017), p. 9, *available at https://www.nei.org/CorporateSite/media/filefolder/Policy/Wall%20Street/Nuclear_by_the_Numbers.pdf?ext=.pdf.* 2015 generating costs are as follows: Fuel—$6.91/MWh; Capital—$7.97/MWh; Operations—$20.62/MWh and Total—$35.5/MWh.

[12] Compared to a hypothetical new advanced nuclear plant, variable costs are higher for natural gas generation by a factor of 4. The only technologies with lower variable costs are geothermal, wind, solar, and hydro. Energy Information Administration (EIA), Levelized Cost and Levelized Avoided Cost of New Generation Resources in the Annual Energy Outlook 2016, August 2016, at 6, *https://www.eia.gov/outlooks/aeo/pdf/electricity_generation.pdf.*

concentrates price than to the conversion price.

Primary supply of enrichment is also relatively inelastic in the short term. As discussed above, enrichers typically cannot remove machines from production due to technical concerns. Enrichers also cannot bring additional machines online in the short term to respond to changes in price because it takes several years to add new machines. Secondary supply of enrichment is a smaller proportion of the total supply than for uranium concentrates or conversion services. In addition, enrichers can change the amount of capacity devoted to primary enrichment as opposed to underfeeding. This small proportion of supply is more able to respond to changes in price.

ii. Medium and Long Term

In the medium and long term, primary supplies of uranium concentrates and enrichment should be more elastic than in the short term. Producers can develop and install additional capacity in response to projections that prices will increase. These decisions, however, typically involve very long time frames. It may take several years of active development before a new mine may begin production. New enrichment and conversion capacity may take on the order of ten years.[13] Alternatively, producers can reduce production and accelerate plans to retire capacity if prices are projected to decrease. URENCO, for example, has chosen to retire enrichment capacity at its European facility without replacement. *See* 2017 ERI Report, 16.

E. Uranium Prices

Uranium markets function in two ways, broadly speaking: Short-term deliveries, called the spot market, and longer-term commitments, called the term market.

1. Spot and Term Prices

For all three markets discussed here, there is a price for an immediate delivery, called the spot price, and a price for long-term contractual commitments, commonly called the term price. The U.S. Energy Information Administration (EIA) defines spot contracts as ''contracts with a one-time uranium delivery (usually) for the entire contract and the delivery is to occur within one year of contract execution (signed date).'' EIA, 2015 Uranium Marketing Report, 1 (2016). EIA considers long-term contracts as ''contracts with one or more uranium deliveries to occur after a year following the contract execution (signed date) and as such may reflect some agreements of short and medium terms as well as longer term.'' The vast majority of purchases on these markets are through term contracts. According to data from EIA, 79% of purchases of uranium by U.S. owners and operators of nuclear power reactors in 2015 were through term contracts. In addition, EIA reports that approximately 92% of enrichment services purchased by U.S. owners and operators in 2015 were through term contracts. *Id.* at 39. EIA does not report data on conversion contracts, but Ux Consulting Company, LLC (UxC), a private consulting firm, publishes data on spot and term contract volume for conversion services. UxC Conversion Market Outlook—Dec 2016 (2016). Information regarding spot and term contracting activity for conversion services is described below in section IV.B.1.iii.

Medium-term contracts have increased in importance in recent years. Such a contract entitles a buyer to delivery of material at a future date between one and a few years after contract execution. Although medium term contracts are considered ''term'' contracts, they differ from traditional term contracts in that they involve one-time-only deliveries and that buyers ordinarily do not use them to secure long-term fuel supplies. In that sense, these contracts form an extension of the spot market to deliveries up to a few years in the future and affect uncommitted demand in these future years.

2. Price Information

Unlike many other commodities, most uranium contracts are not traded through a commodities exchange. Instead, a handful of entities with access to the terms of many bids, offers, and contracts develop what are called ''price indicators'' based on those transactions. Two private consulting firms—UxC and TradeTech, LLC (TradeTech)—publish monthly spot and term price indicators for uranium concentrates, conversion, and enrichment. Both also publish weekly spot price indicators for uranium concentrates.[14] Note, however, that the UxC and TradeTech indicators do not summarize completed transactions.[15] The UxC and TradeTech price indicators are influential as market participants may utilize market-based sales contracts that are based on one or both of these price indicators.

There are also a number of related published prices for U_3O_8. These include a Broker Average Price (BAP) and a Fund Implied Price (FIP), both published by UxC. The former is based on pricing data from ''commodity style'' brokers that have agreed to provide information to UxC and the latter is based on the traded value of the Uranium Participation Corporation (UPC) compared to its uranium holdings.[16] UxC Uranium Market Outlook—Q1 2017, 34–36 (2017). Futures contracts for U_3O_8 are also traded through CME/NYMEX. Through this platform, futures contracts are traded with delivery dates ranging from a month to five years.[17] Other entities, such as Uranium Markets LLC, a uranium brokerage, provide the markets with a range of pricing data for specific transactions at specific timeframes and locations in order to facilitate uranium trade. These types of brokers provide additional price information to the nuclear fuel marketplace.[18]

III. Analytical Approach

A. Overview

Section 3112(d) states that DOE may transfer ''natural and low-enriched

[13] Louisiana Energy Services, LLC, now a subsidiary of URENCO, submitted a license application for a gas centrifuge enrichment plant in late 2003. The facility, known as URENCO USA (UUSA), began operation in mid-2010, almost seven years after the license application was submitted. Given the licensing process, planning for the facility would have had to have begun well before the license application was submitted. Similarly, the timeline for AREVA's COMURHEX II conversion project included feasibility and design studies taking place between 2004 and 2007, with full production capacity reached in 2019. AREVA, ''COMURHEX II: Investing for the Future,'' Nov. 2010, available at *http://www.areva.com/mediatheque/liblocal/docs/activites/amont/chimie/plaket%20CXII%20GB%20MD.pdf.* Also *See* UxC Conversion Market Outlook, December 2016.

[14] The Euratom Supply Agency (ESA) also publishes spot and term price indicators for U_3O_8 based on deliveries to EU utilities. These prices are published annually rather than monthly or weekly. *See* ESA, ''ESA Average Uranium Prices,'' *http://ec.europa.eu/euratom/observatory_price.html* (accessed April 13, 2017).

[15] TradeTech's Weekly U_3O_8 Spot Price Indicator is TradeTech's judgment of the price at which spot transactions for significant quantities of natural uranium concentrates could be concluded as of the end of each Friday. The Ux U_3O_8 Price® indicator is based on the most competitive offer of which UxC is aware, subject to specified form, quantity(> = 100,000 pounds), and delivery timeframe (< = 3 months) and origin considerations and is published weekly. It is thus not necessarily based on completed transactions (although a transaction embodies an offer and its acceptance).

[16] UPC is a publicly traded holding company that invests substantially all of its assets in uranium. UPC's stated investment strategy is to buy and hold uranium rather than actively trading in response to short-term shifts in prices. UPC, Investor Update Presentation, 13 (April 2017), available at *http://www.uraniumparticipation.com/i/pdf/ppt/Investor-Update-April-2017.pdf.*

[17] *See* CME Group, UxC Uranium U_3O_8 Futures Contract Specs, *http://www.cmegroup.com/trading/metals/other/uranium_contract_specifications.html* (accessed April 7, 2017).

[18] *http://www.uraniummarkets.com/home.html (accessed April 7, 2017).*

uranium'' if, among other things, ''the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement.'' In the 2015 Secretarial Determination and Analysis, DOE explained in detail its analytical approach to determine adverse material impact within the meaning of the statute and under the factual conditions existing at the time of a Secretarial Determination.[19] The full explanation is incorporated by reference and repeated here to the extent necessary to provide an overview of the analytical approach DOE will use in this Determination.

Of note, DOE has described transfers as having an ''adverse material impact'' when a reasonable forecast predicts that an industry will experience ''material'' harm that is reasonably attributable to the transfers. As further explained in the 2015 Secretarial Determination and Analysis, in DOE's view the proper inquiry is to what degree the effects of DOE's transfers would make an industry weaker based on an analysis reflecting existing conditions. As a general proposition, ''adverse material impact'' would be a harm of real import and great consequence, beyond the scale of normal market fluctuations, such as those that threaten the viability of any industry. DOE's understanding of the term ''material'' was shaped by the legislative history of Section 3112 and the statute's permissiveness for transfers under the Russian HEU Agreement.

DOE has interpreted the relevant terms in this analysis in advancement of the purpose of section 3112(d) to help preserve, to the degree possible, viable mining, conversion, and enrichment capacity in the United States. DOE interprets the word ''domestic'' to refer to activities taking place in the United States, regardless of whether the entity undertaking those activities is itself foreign. Hence, a facility operating in the United States would be part of ''domestic industry'' even if the facility is owned by a foreign corporation. DOE believes that the phrase ''uranium mining, conversion or enrichment industry'' includes only those activities concerned with the actual physical processes of mining, converting, and/or enriching uranium. Thus, acting solely as a broker for material mined, converted, or enriched by other entities does not constitute part of the domestic ''industry.'' That purpose depends on the actual operation of facilities. To that end, DOE believes ''domestic industry'' should also include, to some extent, activities to develop and activate a facility in the United States, even if the facility has not yet entered production.

In this analysis, DOE understands transfers to have an ''impact'' where those impacts have a causal relationship to the specific set of DOE transfers being considered. Thus, in assessing a given transfer, DOE will essentially evaluate two forecasts: One reflecting the state of the domestic uranium industries if DOE goes forward with the transfer, and one reflecting the state of the domestic uranium industries if DOE does not go forward with the transfer. DOE will compare these two forecasts to determine the relevant and actual impacts on the domestic uranium industries.

B. Factors To Be Considered

In the NIPC, and consistent with the 2015 Secretarial Determination and Analysis, DOE has identified the six factors it will use in this analysis to arrive at a determination of adverse material impact.[20] Those six factors are:

1. Prices
2. Production at existing facilities
3. Employment level in the industry
4. Changes in capital improvement plans and development of future facilities
5. Long-term viability and health of the industry
6. Russian HEU Agreement and Suspension Agreement

As previously explained, while no single factor is dispositive of the issue, DOE believes that these factors are representative of the types of impacts that the proposed transfers might have on the domestic uranium industries. Not every factor will necessarily be relevant on a given occasion or to a particular industry; this list of factors serves only as a guide to DOE's analysis.

C. Comments on DOE's Analytical Approach

Throughout the public process initiated by the July 2016 RFI, several commenters have taken issue with DOE's understanding of what constitutes an adverse material impact under the USEC Privatization Act. For example, commenters have suggested that DOE reconsider its definition of ''adverse material impact'' to encompass scenarios where DOE transfers are not the primary cause of losses in one of the domestic uranium industries. See, *e.g.,* RFI Comment of ConverDyn, at 1; RFI Comment of Energy Fuels, at 1–2; RFI Comment of UPA, at 1. Several commenters have also suggested that DOE's standard for ''adverse material impact'' be directly linked to production costs for the uranium mining, conversion, and enrichment markets. RFI Comment of ConverDyn, at 2. DOE has addressed these comments questioning whether this interpretation of the definition of adverse material impact is sufficient in the NIPC.[21] In the NIPC, DOE explained its position that production costs alone should not be used to determine adverse material impact, but in this analysis, DOE has considered production costs as a factor in determining whether its uranium transfers are having an adverse material impact on the market. Comments received in response to the NIPC inform DOE's understanding about production costs in the uranium mining, enrichment and conversion industries.

Furthermore, DOE has taken into account the qualitative and quantitative statements made by UPA and others in evaluating the current state of the uranium industries. *E.g.,* NIPC Comment of UPA, at 1–2; NIPC Comment of TMRA, at 1; NIPC Comment of URENCO, at 1–3. While these assertions provide valuable context for DOE's analysis, DOE maintains that its current interpretation of ''adverse material impact'' is a clear standard under which DOE ensures that the Secretarial Determination is in compliance with the USEC Privatization Act. This analysis accounts for information provided by commenters as to the six factors in the sections below.

Finally, several commenters cited the *ConverDyn* litigation (a lawsuit in which ConverDyn challenged, among other things, the 2014 Secretarial Determination) as requiring DOE to change its definition and methodology for reaching a determination on adverse material impact because the court held DOE's method to be in violation of law. *See* RFI Comment of Energy Fuels, at 1; NIPC Comment of UPA, at 5–6. As noted in the NIPC, while DOE is mindful of the results of the litigation, the *ConverDyn* litigation does not mandate a change in DOE's method of determining adverse material impact.[22]

[19] 2015 Secretarial Determination, 80 FR at 26367; 26379–26383.

[20] Excess Uranium Management: Effects of Potential DOE Transfers of Excess Uranium on Domestic Uranium Mining, Conversion, and Enrichment Industries; Notice of Issues for Public Comment, 82 FR 13106, 13109 (Mar. 9, 2017).

[21] *Id.*

[22] UPA highlights specific findings from the Sept. 2014 Memorandum Opinion in the *ConverDyn* case. NIPC Comment of UPA, at 5–6. DOE notes that that opinion considered DOE's approach in the 2014 Secretarial Determination, not the 2015 Secretarial

Continued

IV. Assessment of Potential Impacts

This section assesses the potential impacts of DOE transfers at the levels and for the purposes described above in Section I.D.1. In particular, DOE is assessing the impacts of transfers under two scenarios, which correspond to ERI's Base Scenario and Scenario 2 in the 2017 ERI Report. The Base Scenario consists of continued transfers at the current rate of 1,600 MTU per year, and Scenario 2 consists of transfers at a lower rate of 1,200 MTU per year. This analysis assesses the impact of continued EM transfers at these rates beginning in May 2017.[23] Because the impacts of transfers at the 1,200 MTU rate are expected generally to be lower than those under the 1,600 MTU Base Scenario rate, unless otherwise specified, in the analysis below, DOE's conclusions about the effects of transfers under the Base Scenario will bound the effects of transfers at the lower rate of 1,200 MTU.[24] Considering the difference in impacts between these two scenarios and ERI's Scenario 1, where no future EM transfers would be conducted, we come to the conclusions that transfers under either scenario would not cause an adverse material impact to the domestic uranium industries.

This assessment assumes that DOE transfers for cleanup at the Portsmouth Gaseous Diffusion Plant may continue at either the Base Scenario rate or 1,200 MTU; however, other rates of transfer are presented to provide comparison and context for the analysis of impacts on the state of the domestic uranium, conversion, and enrichment industries with and without the EM transfers. In particular, DOE tasked ERI with analyzing two additional scenarios, one in which DOE ceases transfers for EM beginning in 2017, and one in which DOE transfers uranium at a rate of 2,000 MTU. This assessment makes no conclusion as to whether transfers at the rates described in these other scenarios would constitute an adverse material impact on the domestic uranium industries.

A. Uranium Mining Industry

The domestic uranium mining industry consists of a relatively small number of companies that either operate currently producing mines or are in the process of developing projects expected to begin production at some point in the near future. These projects are mostly concentrated in the western states—in recent years, there have been producing facilities in Nebraska, Utah, Texas, and Wyoming. Most uranium mining facilities are owned and operated by publicly traded companies based in the United States or Canada. According to EIA, the preliminary estimate of production from domestic producers in 2016 totaled approximately 2.9 million pounds U_3O_8. EIA, Domestic Uranium Production Report Q4 2016, 2 (January 2017). For comparison, the World Nuclear Association (WNA) reports that worldwide production in 2015 was approximately 157 million pounds U_3O_8.[25]

1. Prices for Uranium Concentrates

The effect of DOE transfers on prices is one of the chief vehicles through which the transfers can cause impacts on an industry. Accordingly, DOE has considered numerous inputs to forecast how continuing transfers at the current level will affect prices. DOE analyzes both market prices and the prices that, on average, industry actually realizes for its products. The EIA average delivered price in the United States is representative of realized prices for the uranium industry on a global basis. Realized prices may be significant for assessing the impact of transfers, but they are not necessarily the same as market prices at any given time.

As discussed in Section II, market prices for uranium concentrates are described in terms of the spot price and the term price. Although there are other types of published uranium prices, these two price indicators are the ones most frequently used as the basis for pricing terms in contracts for the purchase and sale of uranium concentrates. In this section, we discuss the potential future impacts of DOE's transfers on spot and term prices for uranium. For reference, as of April 17, 2017, UxC's spot price indicator was $23.50 per pound U_3O_8. As of March 27, 2017, UxC's term price indicator was [REDACTED] per pound U_3O_8.[26]

DOE has reviewed several different estimates of the effect of DOE transfers on the market prices for uranium concentrates based on different economic models. These estimates appear in market analyses from different market consultants: ERI, UPA (citing TradeTech) and Fluor-BWXT Portsmouth (FBP) (citing Capital Trade, Inc.). DOE has reviewed and evaluated to the extent possible the methodology, assumptions, data sources, and conclusions of each of the market analyses.

i. Energy Resources International Report

DOE tasked ERI with estimating the effect of DOE transfers on the market prices for uranium concentrates for the period 2017 through 2026. Specifically, DOE tasked ERI with estimating the effects under four scenarios, explained below. In all four scenarios NNSA would transfer 500 MTU natural uranium equivalent of LEU from 2017 to 2019, after which NNSA would halt uranium barters. As noted above, the two scenarios assessed in this analysis correspond to ERI's Base Scenario and ERI's Scenario 2, and this assessment makes no conclusion as to whether transfers under the other scenarios would constitute an adverse material impact on the domestic uranium industries. Nevertheless, ERI's estimates of the effect of DOE transfers under these other scenarios has aided DOE's analysis.

Base Scenario: EM would transfer 1,600 MTU in the form of natural UF_6 in 2017 and 2018, 1,569 MTU in 2019 and 559 MTU in 2020.

Scenario 1: EM would halt uranium transfers for services between 2017 and 2026. (''No Transfer Scenario'')

Scenario 2: EM would transfer 1,200 MTU in the form of natural UF_6 per year until 2020 and 528 MTU in 2021, when UF_6 supplies are exhausted.

Scenario 3: EM would transfer 2,000 MTU in the form of natural UF6 per year in 2017 and 2018 and 1,328 MTU in 2019, when UF_6 supplies are exhausted.

The varying transfer rates in these scenarios refer only to the level of uranium transfers for cleanup at the Portsmouth Gaseous Diffusion Plant; the amount transferred for down-blending of LEU is constant across the scenarios. For each scenario, ERI also analyzes the

Determination and Analysis, which the analytical approach described above builds upon.

[23] DOE notes that the lower rate of 1,200 MTU per year beginning in May 2017 does not precisely follow the assumption in ERI's Scenario 2, which has the 1,200 MTU per year rate beginning in January 2017. Nevertheless, DOE considers the impacts of this scenario to fall within the bounds of, and to be covered by the impacts forecasted under the Base Scenario and Scenario 2.

[24] DOE notes that for two years, 2020 and 2021, Scenario 2 involves a larger volume of transfers than the Base Scenario due to the fact that DOE's natural uranium inventory will be exhausted sooner with a higher transfer rate. DOE notes that in these two years, the effects of Scenario 2 may be higher than those under the Base Scenario. But at least for the near-term, *i.e.* 2017–2019, the effects under the Base Scenario should be higher.

[25] World Nuclear Association, World Uranium Mining Production, updated July 2016, *http://www.world-nuclear.org/information-library/nuclear-fuel-cycle/mining-of-uranium/world-uranium-mining-production.aspx* (accessed April 7, 2017).

[26] UxC, Ux Weekly, April 17, 2017 (Volume, 31, Number 16) at 1. UxC publishes a weekly update to its spot price indicator. UxC's term price indicator for uranium concentrates and the spot and term price indicators for conversion and enrichment are updated monthly.

impacts of transfers under the following programs: past releases of depleted uranium to Energy Northwest, future sale of depleted uranium to GLE, and potential future transfer of off-specification uranium. The level of transfers across these three programs is the same in all three scenarios, and ERI's predictions about market price reflect these transfers as well as the cleanup services and down-blending transfers. As in previous analyses, ERI notes that uranium transfers do not necessarily impact the market at the time of transfer. In general, the market impact will take place at the point in time where the transfer displaces commercial supply. This can be estimated based on the expected schedule for delivery as reactor fuel. Thus, even though most of the Energy Northwest transfers have already taken place, ERI estimates that these transfers will affect the market at various times in the future based on the expected delivery schedule. 2017 ERI Report, 22.

In the 2017 ERI Report, as in previous analyses, ERI estimated this effect by employing two different types of models that rely on somewhat different assumptions and methods: A market clearing price model and an econometric model to establish a correlation between the spot market price for uranium concentrates and active supply and demand. For its market clearing price model, ERI constructs individual supply and demand curves and compares the clearing price with and without DOE transfers. In any particular year, the market clearing price for uranium concentrates, for example, is based on the cost of production of the last increment of uranium that must be supplied by the market in order to provide the total quantity of uranium concentrates that is demanded by the market during that year. 2017 ERI Report, 2. To develop its supply curves, ERI gathers available information on the costs facing each individual supply source. ERI then uses that information to estimate the marginal cost of supply for each source using a discounted cash flow analysis, when possible. 2017 ERI Report, 44 n.33. ERI's market clearing price methodology assumes a perfectly inelastic demand curve based on its Reference Nuclear Power Growth forecast. ERI assumes that secondary supply is utilized first, followed by primary production because in an over-supplied market, such as the current market, ''the amount of primary production required to meet requirements, including normal strategic inventory building, is well below actual production.'' 2017 ERI Report, 45.

Distinct from previous analyses, in the 2017 ERI Report, ERI applied its clearing price methodology on an annual and cumulative basis. The annual clearing price methodology is similar to past analyses conducted by ERI; the cumulative methodology represents a new approach by ERI to assess market price impacts. It is important to emphasize that, under either approach, the estimates do not constitute a prediction that prices will decrease by the specified amounts following DOE transfers under a new determination and, further, that the impact of prior transfers is already taken into account by the market in the current spot prices.

ERI's annual methodology assumes that the supply curve in a given year is independent of the DOE inventory releases in prior years. 2017 ERI Report, 49. The cumulative clearing price methodology takes into account inventory releases from prior years in the supply curve. While both methodologies account for past DOE transfers in current prices, they differ in approaches to estimating the supply side of the equation. 2017 ERI Report, 52. According to ERI, the cumulative methodology, when applied retroactively, takes into account that the reduction in one supply source can influence the behavior of other suppliers. Consequently, the cumulative methodology may show a more substantial effect than what is indicated by the annual methodology. ERI presents the impact of historical and scenario-based transfers of uranium under both the annual or cumulative methodologies. Note that ERI states that the price effects attributed to DOE inventory releases are already built into current market prices. This means that if no DOE inventory releases took place since 2009, then future market prices would be higher by the amount estimated as the DOE price effect for that given year. 2017 ERI Report, 50, 54. DOE has considered the 2017 ERI Report and ERI's explanation of its market clearing price methodology. Most aspects of ERI's market clearing approach are essentially the same as those used in the 2015 ERI Report except that they have been updated to include recent information. With respect to the annual clearing price approach and to ERI's general approach to developing supply curve information, DOE adopts and incorporates by reference its conclusion from the 2015 Secretarial Determination and Analysis that ERI's market clearing approach methodology is reasonable for estimating the impact of DOE transfers. For this reason, DOE continues to rely on ERI's annual market clearing price approach in this Determination.

DOE has also considered ERI's explanation of its cumulative market clearing price approach. According to ERI, this approach takes account of the fact that the reduction in one supply source affects the behavior of other suppliers. In general, DOE believes that the methodology underlying ERI's cumulative model is reasonable because it takes account of the possibility that DOE uranium transfers may not in fact displace primary production in the year of the transfer.[27] Certain market actors maintain uranium inventories above requirements and may strategically hold these inventories depending on market prices in a given year. Since these inventories may add to supply in a given year, the total volume of strategic inventories potentially available to enter the market can be looked to as a proxy for expectations about market prices—likely as a supplement to published market price predictions. Thus, to the extent that DOE inventories do not displace primary production, it is reasonable to assume that they may affect decisions of uranium suppliers not just in the year of initial entry into the market, but also in *future years.* ERI does not detail how it predicts how supplier behavior would change, however. Nevertheless, DOE believes that ERI's predictions are reliable because they are based on ERI's production costs estimates, which are based on ERI's extensive collection of data about the production costs for various aspects of supply.[28]

Using the market clearing price model, under the annual and cumulative methodologies, ERI estimates of the level of price suppression attributable to DOE transfers are listed in Tables 2 and 3, respectively. Again, these numbers do not constitute a prediction that prices

[27] In UPA's comment in response to the NIPC, UPA criticizes the ERI cumulative analysis for presenting an average impact rather than adding the price effects in each year to arrive at a total price effect as TradeTech did. Had ERI taken this approach, UPA asserts, the total cumulative impact between 2014 and 2016 would be $15.40 per pound according to ERI's analysis. For the same reasons that DOE disagrees with TradeTech's cumulative figure, explained below in section IV.A.1.ii, DOE disagrees that it is appropriate to simply add up ERI's average effect from separate years to arrive at a ''cumulative impact.''

[28] In addition, as noted in the 2015 Secretarial Determination and Analysis, DOE also believes that the future year supply curves that ERI utilizes in its annual market-clearing price model are reasonable because they are based on ERI's estimates of production cost for various aspects of supply. 2015 Secretarial Determination, 80 FR at 26386–88.

will decrease by the specified amounts following DOE transfers under a new determination and, further, that the impact of prior transfers is already taken into account by the market in the current market prices. 2017 ERI Report, 50, 54.

TABLE 2—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT AND TERM PRICES IN $ PER POUND U_3O_8

[Annual market clearing approach]

	ERI Scenario 1—no EM Transfers	ERI Base Scenario current level (1,600 MTU/year)	ERI Scenario 2 lower level (1,200 MTU/year)	ERI Scenario 3 higher level (2,000 MTU/year)
2017	$0.30	$1.40	$1.10	$1.60
2018	0.30	0.80	0.70	1.00
2019	0.60	1.40	1.20	1.30
2020	0.40	0.60	0.90	0.40
2021	0.80	0.80	2.40	0.80
2022	1.10	1.10	1.10	1.10
2023	0.90	0.90	0.90	0.90
2024	1.70	1.70	1.70	1.70
2025	2.10	2.10	2.10	2.10
2026	2.60	2.60	2.60	2.60
Average (2017–2026)	1.10	1.30	1.50	1.30

TABLE 3—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT AND TERM PRICES IN $ PER POUND U_3O_8

[Cumulative market clearing approach]

	ERI Scenario 1—no EM Transfers	ERI Base Scenario current level (1,600 MTU/year)	ERI Scenario 2 lower level (1,200 MTU/year)	ERI Scenario 3 higher level (2,000 MTU/year)
2017	$4.40	$5.50	$5.30	$5.50
2018	3.20	4.70	4.50	5.30
2019	2.80	5.00	4.30	5.30
2020	1.10	3.70	3.50	3.70
2021	0.40	2.70	2.70	2.70
2022	0.10	1.40	1.40	1.40
2023	0.00	2.10	2.10	2.10
2024	1.60	1.70	1.70	1.70
2025	2.00	2.30	2.30	2.30
2026	0.70	1.30	1.30	1.30
Average (2017–2026)	1.60	3.00	2.90	3.10

Although DOE believes that ERI's cumulative method is a reasonable approach to predicting the effect of future DOE uranium transfers, the specific figures listed in ERI's Tables 4.4, 4.5, and 4.6, do not isolate the effects of EM transfers in future years. It is possible to isolate the effects of these transfers based on the difference in market clearing price in any given year between a scenario with zero EM releases of uranium (Scenario 1) compared to the scenarios where EM uranium is released at different rates. In other words, we present the price effects on a marginal or incremental basis as this price effect reflects the state of the domestic uranium industry with the EM future transfers, and the state of the industry without the EM future transfers. This calculation is significant because the analysis for this Determination, at its core, answers the question of the effect on the uranium industry from future DOE transfers for EM cleanup work. That effect is evaluated by comparing the effects on markets with those future DOE inventory releases, and without those future DOE inventory releases. DOE believes it is reasonable to rely on this marginal price effect because it is itself derived from and based on ERI's cumulative market clearing methodology, which as explained above, provides a reasonable prediction of the effect of uranium transfers on market prices.

To determine the marginal price effect, DOE has used Scenario 1 as the point of reference because Scenario 1 includes the price effects from prior DOE uranium inventory releases plus an increment for the NNSA transfers. The price effects attributable to only the different levels of EM releases under the cumulative method can be found by calculating the difference between the price effect in Scenario 1—the No EM Transfers scenario—and the price effect in these other scenarios. For example, the marginal price effect attributable to DOE transfers under the Base Scenario in 2017 would be $1.10, the difference between the cumulative price effect under the Base Scenario ($5.50) and the cumulative price effect under Scenario 1 ($4.40). Because DOE is currently transferring at 1,600 MTU per year, the current market prices already reflect the level of price suppression predicted by ERI's Base Scenario. Thus, if DOE were to transfer 0 MTU for EM in 2017, the price in 2017 would be expected to be higher by $1.10 compared to continued transfers at 1,600 MTU. Similarly, were DOE to transfer 1,200 MTU in 2017, the price in 2017 would be expected to be higher by $0.20 compared to continued transfers at 1,600 MTU (the difference between the marginal effect under the Base Scenario and the marginal effect

under the 1,200 MTU Scenario).[29] Table 4 provides the price effects estimated by ERI for the varied scenarios of EM transfers under the cumulative method expressed as the marginal price effect.

TABLE 4—MARGINAL PRICE EFFECT OF VARIED RATES OF URANIUM TRANSFERS—CUMULATIVE METHOD

	ERI Base Scenario current level (1,600 MTU/year)	ERI Scenario 2 lower level (1,200 MTU/year)	ERI Scenario 3 higher level (2,000 MTU/year)
2017	$1.10	$0.90	$1.10
2018	1.50	1.30	2.10
2019	2.20	1.50	2.50
2020	2.60	2.40	2.60
2021	2.30	2.30	2.30
2022	1.30	1.30	1.30
2023	2.10	2.10	2.10
2024	0.10	0.10	0.10
2025	0.30	0.30	0.30
2026	0.60	0.60	0.60
Average (2017–2026)	1.40	1.30	1.50

Illustrating the marginal price effect under the cumulative methodology is useful in isolating the price effect of only the EM transfers. While useful, this approach does not account for the added effect of other future uranium transfers that will impact the market—the NNSA transfers for down-blending, the ENW transfers of LEU, and the depleted uranium transfers to GLE and potential transfers of off-spec uranium. The annual clearing price methodology, however, does provide the combined effect of future DOE transfers in the year they are transferred. In theory, DOE could perform the same marginal or incremental analysis to the annual clearing price effects, to isolate the effects of only the EM transfers. DOE considers both approaches, which present different but complimentary perspectives on how to estimate future price effects, to be reasonable and informative. Looking at price effects from both perspectives adds an additional dimension to the analysis, and assists DOE in understanding forecasted price impacts.

As yet another means to understand the price effect, ERI presented information on the cumulative clearing price effect relative to ''No DOE'' clearing prices for uranium, where the ''No DOE'' clearing price assumes that DOE releases from 2009 onward were zero. 2017 ERI Report, 58. Table 4.7 in the ERI Report provides an assessment of price impacts going forward, for the period 2017 to 2026, and the estimated change in the uranium clearing price attributable to the DOE inventories under the four scenarios relative to the ''No DOE'' market prices. As in the discussion above, understanding the price impacts of the ''No DOE'' cumulative clearing price analysis requires a calculation of the marginal percentage change with and without the EM releases. Using the percentages from ERI's Table 4.7, Scenario 1, and comparing those percentage in each year to the other EM release scenarios. Table 5 presents the marginal price effect expressed as a percentage of market price.

TABLE 5—CUMULATIVE MARGINAL PRICE EFFECTS AS PERCENTAGE OF ''NO DOE'' CLEARING PRICE

	ERI Base Scenario current level (1,600 MTU/year) marginal %	ERI Scenario 2 lower level (1,200 MTU/year) marginal %	ERI Scenario 3 higher level (2,000 MTU/year) marginal %
2017	3	2	3
2018	4	3	5
2019	6	4	7
2020	7	6	7
2021	6	6	6
2022	3	3	3
2023	5	5	5
2024	1	1	1
2025	1	1	1
2026	2	2	2
Average (2017–2026)	3	3	3

For example, as ERI notes, under Scenario 1, where EM transfers are halted starting in 2017, average uranium prices for the period 2017–2026 would be expected to be 3% higher than under the Base Scenario (the difference between 7%, the average price suppression over the ten year period under the Base Scenario and 4%, the

[29] DOE acknowledges that these two calculations are hypothetical because DOE has already conducted several transfers in the early part of 2017. Thus, it would not be possible for DOE to transfer 0 MTU in 2017. Further, as explained above, transfers at the lower rate of 1,200 MTU would not begin until May 2017. Due to the transfers in early 2017, the total amount of EM transfers in calendar year 2017 under the 1,200 MTU scenario would actually be somewhat higher than 1,200 MTU.

average price suppression over the ten year period under Scenario 1). Stated otherwise, the percentage price effect for each scenario other than Scenario 1 is the difference between the cumulative percentage for the Scenario in question and the cumulative percentage change for Scenario 1. *E.g.,* in year 2020, prices would be 6% higher under Scenario 2 (9%–3%).

In addition to its market clearing price models, ERI also used an econometric model to estimate the effect of DOE transfers on spot market price.[30] ERI calculated a correlation between the monthly spot prices published by TradeTech with the active spot market supply and active spot market demand, also published by TradeTech. ERI used the correlation to estimate how the spot market prices would respond to the availability of new supply from DOE. 2017 ERI Report, 61–62.

Compared to the market clearing analysis, the econometric model deals mostly with short-term supply and demand and spot prices. Applying the correlation results in an estimated spot market price effect of $5.30 per pound U_3O_8 over the last three years and a projected spot market price effect of $3.5 per pound U_3O_8 over the next 10 years. 2017 ERI Report, 61–62. This model shows a DOE price effect being higher in the near-term (2017–2020), because the price effect is on future spot market prices, which are projected to eventually rise with or without DOE inventory releases. Because this regression is based on historical trends in the spot market price series, it is most useful to provide an understanding of recent years' price effect, and provides limited reliable information about future price effects. The econometric model makes calculations based on a functional relationship between published prices and certain supply and demand variables representing, in essence, uncommitted supply and demand, to predict future prices based on the future course of the supply and demand variables. Forecasts of uncommitted supply and demand require assumptions not only about how supply and uranium requirements will evolve, but also about how suppliers and purchasers will vary their mix of long-term and short-term purchasing. In the short-term, the mix of long- and short-term purchasing can be predicted based on the mix in recent years and on the estimates of uncovered supply. Such forecasts become significantly less reliable for later years. DOE therefore relies on ERI's market clearing price methodology as the more reasonable approach to forecasting future price effects.

ii. TradeTech Analysis

The Uranium Producers of America (UPA) attached to its comment in response to the RFI, and re-incorporated in its comments in response to the NIPC, an analysis it commissioned from TradeTech, LLC, a uranium market consultant. RFI Comment of UPA, Attachment, ''TradeTech UPA DOE Request for Information Response'' (2016) (hereinafter ''TradeTech Analysis''). UPA also included in its comments on the NIPC additional critique of the ERI Report.

The TradeTech Analysis provides information on spot prices for uranium since 2011, after Fukushima, indicating a decline in prices of 60 percent as of mid-July 2016. TradeTech Analysis, at 4. TradeTech presents an estimate of the cumulative impact of DOE transfers on the Exchange Value (TradeTech's monthly U_3O_8 spot price) over the period of 2012–2015. TradeTech presents the median impact in each year of this period as follows: $2.79 in 2012, $3.81 in 2013, $4.18 in 2014, and $6.17 in 2015. TradeTech then presents the ''total cumulative impact from DOE transfers 2012–2015'' as $16.95 per pound, a figure evidently calculated by adding together the median impact for each year in the time period. More generally, TradeTech explained there is a downward trend in recent years for uranium production and demand, producer profit margins, and long-term contracting practices. Without citing to any additional quantitative analysis or modeling, TradeTech concludes that DOE material transfers entering the spot market will continue to have a measurable adverse material impact on uranium market prices and, by extension, uranium producers. TradeTech believes that if DOE were to cease its transfers, producers would see improvement in the market. TradeTech Analysis, at 8.

TradeTech does not explain the methodology it used to estimate the impact of DOE transfers. For the purposes of this analysis, DOE assumes that the estimate is based on the same Dynamic Pricing Model described in a 2015 TradeTech report submitted in response to the 2015 Request for Information on the 2015 Secretarial Determination. To the extent that the 2017 TradeTech Analysis is based on a similar model, DOE adopts its conclusions with respect to that model from the 2015 Secretarial Determination and Analysis. That is, the TradeTech model is similar to the methods ERI uses in its econometric approach, which may provide a reasonable estimate of the price response under short-term conditions, but it is not an accurate prediction of the effect of future DOE transfers. Although TradeTech does not forecast the effects of future transfers, UPA suggests that future transfers will have an impact equal to at least the median impact in 2015—*i.e.* $6.17. Alternatively, UPA suggests that that impact can be expected to continue rise at rate of roughly 30% each year—*i.e.* $8.10 in 2016, $10.64 in 2017, and $13.97 in 2018. *See* RFI Comment of UPA, 5. DOE does not believe these numbers are accurate, and that UPA incorrectly assumes that trends evident in TradeTech's model of *past transfers* would automatically carry forward into future years. In any case, even if TradeTech had prepared a forecast of the impacts of future DOE transfers, DOE believes that ERI's market clearing model is a more reasonable approach to estimating medium- and long-term effects.

With respect to the ''cumulative'' figure presented in Figure 3 of the TradeTech Analysis, neither TradeTech nor UPA attempts to justify the economic principles behind this approach. DOE does not believe it is appropriate to simply add the median impacts in successive years to determine the ''cumulative'' impact for at least three reasons. First, it is unclear why the time period should be divided by year rather than, say, quarterly, monthly, or even weekly or daily. If it is appropriate to add the median impact in successive years, it follows logically that it is also appropriate to add the median impacts across other time periods. This would lead to the illogical result that the ''cumulative'' impact could be the sum of the average price impacts for each individual day in the study period.

Second, TradeTech's own chart does not support the assertion that DOE transfers have suppressed the market price by $16.95. Figure 3 of the TradeTech Analysis charts in linear form the actual market price versus the expected price with no DOE transfers. At the end of the study period, the difference between the lines on the figure appear to be roughly the same as the 2016 median impact—*i.e.* roughly $6.00—rather than the larger number presented as the cumulative impact.

[30] In its comment in response to the NIPC, UPA criticizes ERI's econometric model, noting that it is not used in ERI's overall analysis. NIPC Comment of UPA, at 8. Although it is unclear what UPA means in referring to ERI's ''overall analysis,'' DOE notes that ERI has presented the results of its econometric model in past reports. As noted below, DOE believes ERI's econometric model is similar in certain respects to the TradeTech model.

Third, the figures cited by TradeTech and UPA do not align with recent market dynamics. Considering that DOE transfers are less than 5% of worldwide requirements, this number is unrealistically large. Applying the approach suggested by UPA and TradeTech of adding together the expected price suppression in 2015 and 2016 based on ERI's price forecast would yield a ''cumulative'' price effect of $10.50 per pound compared to the overall price decline in that same period reported by ERI of roughly $17 per pound. If this were correct, it would mean that DOE's transfers alone accounted for over 50% of the price decline, even though DOE's transfers in that same period made up only about 15% of the total domestic uranium requirements and 5% of worldwide requirements. Furthermore, UPA claims that the cumulative impact of DOE transfers from 2012 to 2018 will reach $49.64. These numbers are simply too large to be realistic. While DOE understands that in an oversupplied market, as has been the case in recent years, secondary supply sources may be used before primary supply sources, it is not reasonable to conclude without further support that the total cumulative effect of DOE transfers account for more than half of the market price decline, given other market factors at play, *e.g.,* the early closure of nuclear power plants in the U.S. and Western Europe, and the reduction of nuclear energy in France based on legislation passed in 2015. 2017 ERI Report, 4. For these reason, DOE believes the cumulative approach of UPA and TradeTech of simply adding each median annual effect together does not present an accurate assessment of price effects from DOE transfers.

iii. Capital Trade Inc. Analysis

FBP attached to its comments in response to the NIPC an analysis it commissioned from Daniel Klett, an economist and principal with Capital Trade, Inc. NIPC Comment of FBP, Attachment, ''Review of ERI Price Effect Estimates for Uranium Associated with DOE Inventory Releases,'' (2017) (hereinafter ''Capital Trade Analysis''). As explained by FBP, ERI's use of the cumulative price clearing methodology found larger price effects by including not only inventories sold into the market by DOE each year, but also ''inventory overhang'' price effects associated with DOE inventories held by users. NIPC Comment of FBP, at 3. The Capital Trade Analysis commissioned by Fluor argues that this approach is flawed for numerous reasons and is without a theoretical basis in economics. Capital Trade Analysis, 5. The Capital Trade Analysis concludes that DOE should continue to rely on ERI's annual methodology for estimating the price effects of DOE inventory releases. Capital Trade Analysis, 7.

The Capital Trade Analysis makes three essential arguments. DOE believes Capital Trade has misunderstood ERI's cumulative approach. DOE continues to believe that ERI's cumulative method is reliable, and therefore, that DOE's use of ERI's cumulative market clearing price information to calculate the marginal price effect of future EM transfers is reasonable. DOE also continues to believe, and agrees with Capital Trade, that ERI's annual methodology is a reasonable approach and should be relied upon for estimating price effects.

First, Capital Trade argues that ERI's cumulative methodology ''violates'' the principle that price equals marginal cost. This position appears to be based on a misunderstanding of ERI's cumulative methodology. ERI's cumulative methodology, as compared to the annual methodology, involves adjusting the supply curve in each year to take account of supply and demand conditions in prior years. This accounts for the possibility that the volume a particular supplier may be able to supply at a given price is dependent on investment decisions made in prior years. In this manner, a change in supply in one year can affect the supply curve in later years to the extent that it influences the investment decisions of the suppliers that would otherwise make up the supply curve in future years. ERI's cumulative approach simply takes this elasticity of supply into account in developing estimates of future supply curves. In all cases, the market clearing price would continue to be determined by the intersection of the demand curve and the supply curve, *i.e.* the marginal cost of production of the last unit supplied.

Second, Capital Trade argues that the ''inventory overhang'' effect may affect the timing of price effects but not the magnitude. As explained above, DOE believes that in referring to ''inventory overhangs,'' ERI is taking account of the possibility that not all DOE transfers displace primary production. Certain market actors may hold uranium inventories in excess of reactors requirements for reasons such as strategic investment or to guarantee security of supply. These strategic inventory holders decide how much to hold in reserve based at least in part on market prices. Because inventories held in excess of requirements can potentially reenter the market in future years, perceptions about the total size of such inventories may affect supplier (and purchaser) investment decisions. To the extent that DOE transfers do not displace primary production and instead add to the total volume of reserves in excess of reactor requirements that are potentially available to enter the market in future years, that addition to secondary supply could conceivably have price effects that are *both* delayed and magnified to the extent that suppliers look to the total volume of reserves held in excess of requirements in making investment decisions.

Third, Capital Trade states that ERI is unclear and inconsistent with regard to when and how a particular volume has an effect on market price and that ERI does not explain how the shutdown of primary mines factor into the cumulative methodology. DOE acknowledges that ERI has declined to provide specific information regarding its estimates of supply curves in future years. ERI explains that it develops its proprietary supply curves based on available information on costs facing each individual supply source from publicly available sources, including public filings from various mining companies, and evidence of how suppliers have responded to changes in the past. DOE believes that ERI's approach to estimating production costs would yield reliable predictions of supplier behavior. To the extent that ERI predicts primary mine shutdowns, these would be accounted for in the supply curves that ERI builds for each year in order to determine market clearing price.

For these reasons, DOE believes that ERI's cumulative method is reasonable, and therefore, it is appropriate for DOE to rely on the cumulative marginal price effects of EM transfers predicted by ERI's cumulative method.

iv. Effect of DOE Transfers on Market Prices

Based on the foregoing discussion of market analyses and DOE's consideration of the information, DOE concludes that pursuing the level of EM transfers under the Base Scenario will suppress the market price of uranium concentrates in the next decade by an average of either $1.30 or $1.40 per pound U_3O_8, based on the annual clearing price approach or the marginal cumulative clearing price approach, respectively.

As described in Section II.a.i, both the annual and the marginal cumulative clearing price projections provide valuable and complementary insight into the future price effects of DOE transfers. As in the past, DOE relies on

ERI's annual market-clearing approach to assess the impact of future DOE transfers. Now, DOE also relies on the marginal cumulative market-clearing approach to assess the effect of future EM transfers. After analyzing these estimates, DOE bases its conclusions here on the larger projected price effect of the transfers on average over the next decade—the cumulative marginal market-clearing price effect of $1.40 per pound U_3O_8. This estimate is close to the average price effect for the near-term time period—from 2017 through 2019—of $1.20 (annual) or $1.60 (cumulative marginal) per pound U_3O_8. Further, if DOE transfers are conducted at the lower Scenario 2 rates, this would create a lesser suppression on market prices as compared to transfers under the Base Scenario in the near-term of roughly $1.00 (annual) or $1.20 (cumulative marginal) per pound U_3O_8, the difference from 2017 to 2019 between the Base Scenario and Scenario 2 under the annual and marginal cumulative methods, respectively.

The significance of price suppression at this level depends, in part, on current and forecasted market prices. Recent spot and term price indicators published by UxC for the first quarter of 2017, were $23.50 per pound U_3O_8 on the spot market as of April 17, 2017 and [REDACTED] per pound U_3O_8 on the term market.[31] The forecast price effect reasonably attributable to DOE transfers under the Base Scenario based on the marginal cumulative approach ($1.40) represents 6% and 4% of current spot and term prices, respectively. This percentage change is similar to the percentage change anticipated in the 2015 Determination for prices relative to the existing spot and term prices at that time—6.8% and 5.5%, respectively. And, a similar result is shown in Table 4, which reflects in 2017 a 3% marginal cumulative price effect for DOE transfers in the Base Scenario under the ''No DOE'' clearing price approach.

Moreover, this price effect is within the range of market fluctuations experienced in the uranium industry in recent years. ERI's statistical model of price volatility on an annualized basis (as shown in Figures 4.34 and 4.35) illustrates the conclusion that historical price volatility is noticeably higher for the uranium and conversion markets than for the enrichment market over the long term, although enrichment term price volatility has been higher and conversion term price volatility has been lower in recent years. 2017 ERI Report, 94–96. Even in the last three years, the U_3O_8 price has experienced significant volatility, with annual price volatility increasing during 2014 and 2016. For example, the spot prices of uranium from January 2015 to December 31, 2016, went from a 46% decline to a 21% increase from December 31, 2016, to the current March 2017. Term prices for uranium also have experienced a range of price changes, with a decrease of 40% between January 2015 and December 31, 2016, to an increase of 3% from December 31, 2016, to March 2017. Price effects that are in the range of 6 and 4 percent are not substantial or outside historical experience in the uranium markets.

DOE believes that it is appropriate to compare the price effect in future years to forecasted market prices in those years. Using near-term projected market clearing prices from ERI's Nuclear Fuel Cycle and Price Report December 2016 Update (at 4–17) [REDACTED] DOE calculates that the average price effect of planned DOE transfers under the Base Scenario assuming a price effect of $1.40 per pound would cause an average percent decrease in the near-term of 6% per year. Looking at a 10-year average of forecasted prices from this same report yields a 4% impact from the DOE transfers' projected price effect. While ERI's market-clearing price effect is not intended to be a direct price forecasting tool, using the ERI Reference Case price forecasting data allows us to derive an approximate percentage future effect. This is also another mechanism to compare the average percentage cumulative marginal effect projected by ERI for the same time period.

v. Effect on Realized Prices

A principal mechanism through which a change in market price could impact the domestic uranium mining industry is through the effect on the prices that various production companies actually receive for the uranium they sell—the ''realized price.'' The market price indicators published by TradeTech and UxC are based on information about recent offers, bids, and transactions. This information includes activity that does not involve the domestic uranium producers—*i.e.* transactions involving international producers, traders, and brokers. In addition, the current market prices do not reflect the fact that many uranium producers actually achieve prices well above the market prices due to the prevalence of long-term contracts that lock in pricing terms over a period of several years.

As previously noted, most deliveries of uranium concentrates take place under term contracts. According to data from EIA, 79% of purchases of uranium by U.S. owners and operators of nuclear power reactors in 2015 were through term contracts. EIA, 2015 Uranium Marketing Report, 1 (2016). UxC data indicates that spot contracts made up [REDACTED] of total contracting volume in 2016, and term contracts [REDACTED].[32] U.S. utilities, in particular, have increasingly tended toward mid-term contracts. UxC Uranium Market Outlook—Quarter 1 (2017), 27.

ERI assumes that 50% of the NU that EM transfers is introduced through spot markets and 50% through term market contracts. 2017 ERI Report, 38. If this assumption is not exact and more or less than 50% of DOE transfers for Portsmouth cleanup are not sold through term contracts—in that they do not affect the term price indicators published by UxC and TradeTech—such an error in ERI's assumptions would simply decrease the reliability and certainty of ERI's econometric forecast in the mid- to long-term. As described above, DOE concludes that ERI's econometric analysis is likely to be less reliable over the longer term anyway, because predictions about uncommitted supply and demand in future years are uncertain.

The actual effect experience by a primary producer would be the proportionate change in its realized prices. FBP and UPA, in comments, have provided information on realized prices. In its comment on the RFI, FBP noted that Peninsula Energy, parent of Strata Energy, signed four contracts from 2011 through 2016 for a total of 8.2 million pounds at an average price of over $54 per pound; UR Energy reported contracts with deliveries from 2016 through 2021 with average prices of $49.81 per pound, and Energy Fuels reported sales of 1.1 million pounds in 2015 at an average price of $56 per pound. NIPC Comment of FBP, at 13. Conversely, TradeTech reported that in 2015, 21 percent of uranium concentrates was purchased under spot contracts at a weighted average price of $36.80 per pound. RFI Comment of UPA, at 5. TradeTech cites EIA figures showing that 6 percent of U.S, utility purchases were of U.S.-origin in 2015, at a weighted-average price of $43.86 per pound, 5 percent below the weighted-average price for all purchases. RFI Comment of UPA, at 6. TradeTech opines that this decline is part of a

[31] UxC Nuclear Fuel Price Indicators, Weekly Spot Ux U_3O_8 Prices as of March 27, 2017, *https://www.uxc.com/p/prices/UxCPrices.aspx* (accessed April 5, 2017).

[32] [REDACTED] UxC Uranium Market Outlook—Quarter 1 (2017), ii.

larger trend in realized prices, and is expected to continue as legacy contracts signed over the last 10 years are fulfilled. *Id.* EIA reported in 2015 realized prices of $42.91 per pound. *Id.* at 7.

Table 6 provides data on sales and realized prices for U.S. uranium producers in 2016 from public filings. The data in Table 6 demonstrate that several of the producers obtained a realized price above the 2015 realized price cited by EIA. Although realized price data was not available for Energy Fuels, a statement from its SEC 10–K form indicates that ''[t]hree of our four supply contracts contain favorable pricing above current spot prices.'' Energy Fuels Inc., Management's Discussion and Analysis, Year Ending December 31, 2016, at 119 (Dec. 2016). New long-term and mid-term contracts among all U.S. uranium producers are likely to have similarly high prices relative to the spot market.

TABLE 6—REPORTED SALES AND REALIZED PRICE BY U.S. PRODUCERS

Information from public filings		
Producer	2016 Sales (lbs U_3O_8)	Realized price
Uranium One [33]	56,100	$27
Ur-Energy [34]	22,191	41.38
Cameco [35]	N/A	N/A
Energy Fuels [36]	1,147,933	47.42
Uranium Energy Corp. [37]	N/A	N/A

To the extent that contracts have floor price provisions, the prices realized by producers may not fully reflect any market decline. 2017 ERI Report, 71. [REDACTED] UxC Uranium Market Outlook—Quarter 1 (2017), at 31. Realized prices and the exposure to the spot market in the U.S. uranium industry vary between companies. ERI reports that the share of U.S. production coming from companies that are effectively unhedged (no long-term contracts with higher fixed prices) has declined from about 25% in 2012 and 2013 to about 3% in 2015 and 2016. 2017 ERI Report, 73. ERI emphasizes, however, that it does not appear that removing the DOE inventory from the market and adding back the cumulative price effect attributed to the DOE inventory material in 2016 in the Base Scenario would necessarily increase current prices enough to markedly change the realized prices for new production centers in the U.S. 2017 ERI Report, 73–74.

EIA provides data about sales using different pricing mechanisms. EIA reports that of the approximately 19 million pounds U_3O_8 equivalent purchased by U.S. reactor operators from domestic sources [38] and delivered in 2015, 13.9 million pounds were purchased based on fixed or base-escalated pricing—approximately 73%—with a weighted-average price of $40.34. Approximately 876,000 pounds were purchased based purely on spot-market pricing—approximately 5%—with a weighted-average price of $38.22. The remaining 3.9 million pounds—approximately 21%—was sold based on some other pricing mechanism with a weighted average price of $53.59. EIA, 2015 Uranium Marketing Annual Report, 22–24 (2016). DOE understands that the realized prices received for natural uranium in the last year have been lower than in the several previous years. However, the long-term forecasts do not indicate that this steep decline will continue.

Given that ERI reports that essentially all U.S. producers have at least some long-term contracts with fixed prices above the spot market price [39] and that the average realized price continues to be above the current spot price, it appears that the domestic uranium industry is somewhat insulated from the impact of DOE transfers on uranium prices. In particular, price suppression attributable to DOE transfers under either scenario does not have a significant effect on preexisting, long-term contracts that were entered into at higher prices. That said, DOE transfers will have an effect on the contract price for spot and term contracts entered into in the future. For those contracts, and as explained above, the anticipated effect of EM transfers is expected to be relatively small—approximately 6% of expected near-term prices—and well within the range of normal market price fluctuations.

2. Production at Existing Facilities

DOE believes that primary producers consider a range of different inputs in determining whether to decrease, continue, or increase production at currently operating facilities. Market prices are certainly one element of this calculation, but producers also consider contractual obligations (and what these contracts may mean for realized prices), projections about future prices, and the various costs associated with changing production levels. In order to forecast how DOE transfers will affect production levels, DOE has considered how producers have responded to price changes in the past, and the relationship between market prices and production costs.

EIA reports data on production levels in the domestic uranium industry on a quarterly and annual basis. According to EIA, U.S. primary production in 2015 stood at 3.34 million pounds U_3O_8. EIA's most recent quarterly report provides preliminary data for 2016. EIA's preliminary figures for 2016 indicate that U.S. production of uranium concentrates declined 13% from 2015 production to 2.92 million pounds U_3O_8. ERI's projection that 2016 U.S. production was expected to decline below 3.0 million pounds is consistent with EIA's preliminary data. 2017 ERI Report, 68. U.S. uranium production peaked in 2014 at 4.9 million pounds. Although there were a number of new starts that were spurred by the price run-up in 2006 and 2007, a number of these facilities have limited production in response to the decline in prices since that time.

In 2016, Cameco halted new wellfield development at its Crow Butte and Highland/Smith Ranch centers, which resulted in a production decline of 36% from 2015 levels. Production at the Highland/Smith Ranch center is expected to further decline by more than 50% in 2017. Cameco's curtailment at its U.S. properties follows Willow Creek, Palangana, and Alta Mesa halting new wellfield installation in 2013 and

[33] These figures represent sales through Dec. 31, 2016. Uranium One operates the Willow Creek mine in Wyoming. Uranium One Inc., Operating and Financial Review, 4, 16 (Dec. 2016), *available at http://www.uranium1.com/index.php/en/investor/financial-reports-and-filings/annual-reports.*

[34] UR-Energy operates the Lost Creek ISR mine in Wyoming. UR-Energy Inc. Form 10–K, Securities and Exchange Commission, at 49 (Mar. 3, 2017) *https://www.sec.gov/Archives/edgar/data/1375205/000155837017001345/urg-20161231x10k.htm* (accessed April 11, 2017).

[35] Cameco operates the Smith Ranch-Highland (Wyoming) and Crow Butte (Nebraska) ISR mines. Cameco, Annual Report 2016, Management's Discussion and Analysis, at (Feb. 9, 2017), *https://www.cameco.com/invest/financial-information/annual-reports/2016.*

[36] Energy Fuels operates the White Mesa conventional mill in Utah, the Nichols Ranch ISR mine in Wyoming, and the Alta Mesa Project in Texas. Energy Fuels Inc., Management's Discussion and Analysis, Year Ending December 31, 2016, at 4 (Dec. 2016), *available at http://www.energyfuels.com/wp-content/uploads/2017/03/2016.12.31-10K-FINAL-Reduced-Size.pdf*

[37] Uranium Energy Corp. (UEC) operates the Hobson/Palanga ISR mine in Texas. UEC reports that as of July 31, 2016, it had no uranium supply or ''off-take'' agreements in place. UEC states that future uranium concentrates sale are expected to occur at the spot price. Uranium Energy Corp. Form 10–K, Securities and Exchange Commission, at 6, 72 (Dec. 2016), *available at https://www.sec.gov/Archives/edgar/data/1334933/000127956916004485/v449966_10k.htm.*

[38] Note that EIA's figure includes purchases of U.S.-origin uranium as well as purchases from a firm located in the United States. Therefore, this number includes uranium from sources other than the domestic uranium industry. EIA, 2015 Uranium Marketing Annual Report, 22 (2016).

[39] 2017 ERI Report, 121.

2014, resulting in minimal or no production from these facilities in 2015 and 2016. ERI reports that Energy Fuels' White Mesa mill operated at low levels, processing alternative feed material and stockpiled ore from prior conventional mining in Arizona. ERI further reports that newer in-situ recovery projects at Nichols Ranch and Lost Creek held production steady rather than continue to ramp up to planned levels. Peninsula's Lance ISR project (part of the Ross permit area) began operation in late 2015 and began shipping drummed uranium for conversion services in mid-2016. ERI suggests that these production trends will continue into 2017 although Lance is expected to add some production. 2017 ERI Report, 7.

EIA reports that the same number of uranium concentrate processing facilities—seven—operated in 2016 as in 2015. In 2016, production from Hobson/Palangana ceased, while production from the Ross Central Processing Plant/Lance began. EIA Domestic Uranium Production Report Q4 2016, 4–6 (January 2016).

ERI presents a figure (Figure 4.24) showing various industry contracting and production events as compared to both the spot and term price of uranium. 2017 ERI Report, 74. That figure shows that most new U.S. production was supported by long-term contracts in the range of $55 to $70 per pound. However, one producer entered into contracts when long-term prices were in the $45 to $50 per pound range in late 2014 to early 2016, which allowed new operations to begin. ERI notes that, ''At least one of these companies has stated that the project would not have been able to proceed if the initial contracts had been made at then-current price levels ($45 to $50 per pound long-term).'' 2017 ERI Report, 73. In March 2017, Energy Fuels Resources received all licenses, permits and approvals permits to allow wellfield development at its Jane Dough property, an expansion of its currently-producing Nichols Ranch property. Energy Fuels opined that, ''Uranium spot prices are up over 40% since early December 2016, and we are optimistic that we will continue to see positive market catalysts as the year goes on. As uranium prices continue to rise on a sustained basis, we expect to resume wellfield construction at Nichols Ranch, which is expected to include the Jane Dough wellfields in the future.'' It has been reported that a company official said that Energy Fuels will consider production from Jane Dough after spot prices reach the $40/pound U_3O_8 level.

ERI's Figure 4.24 also shows the price levels at the time cutbacks were announced by various U.S. suppliers. This graphic depicts price points for cutbacks at select operations: $45 per pound in the spot market for conventional mines in Utah; $40 per pound in the spot market for an-situ-leach operations; and $35 per pound in the spot market for an additional in-situ leach operation and conventional mines, as well as a uranium mill. As prices declined to less than $30/pound in early 2016, Cameco halted all new U.S. well field development, as noted earlier in this section. 2017 ERI Report, 74.

ERI estimates average production costs for existing mines by referring to EIA's published data on production expenditures across the uranium industry. Using a three-year average to smooth out year-to-year differences, ERI notes that average production costs remained fairly constant from 2009 to 2012 at about $40 per pound. However, EIA reports that average production costs have declined since that time as U.S. producers curtailed operations at some higher cost mines. Using the EIA data, ERI calculates a three-year average production cost for $31/pound in 2015. 2017 ERI Report, 75. ERI further reports that it estimates average production costs at U.S. in-situ-leach facilities, which includes exploration and development drilling costs needed to keep the mine producing, at $37/pound in 2015, and expects that this will decline further to $35/pound in 2016. 2017 ERI Report, 76.

UxC has developed and reported upon production cost data in its Uranium Market Outlooks and a 2015 Production Cost Study. UxC Uranium Market Outlook, Q1 2016 (2016); UxC Uranium Production Cost Study (2015). UxC developed a production cost curve for operating projects that assumes a [REDACTED] return. UxC describes the forward costs estimates as ''the minimum sales price a producer might accept under a new contract if recovery of sunk costs is not required.'' UxC divides the various production centers into cost bands. [REDACTED] UxC, 2015 Production Cost Study, 92.

Actual production levels and costs are usually proprietary information, so DOE must generally rely on estimates. ERI's estimates and UxC's estimates are generally consistent, given what we know about efficiency improvements at some facilities and operational changes in others as wellhead development slowed or ceased. In 2015, DOE found that the production cost estimates from TradeTech, NAC, and UxC were all generally consistent with ERI's conclusions. ERI utilized the same methodology in 2017. We consider that ERI's analysis is likely in line with other market experts.

ERI also reports that while the spot uranium price averages $36.76/pound in 2015, it averaged less than $26/pound in 2016. The term and spot prices reported by UxC at the end of March 2017 are below the estimated production cost for in-situ properties as well as the U.S. average for all properties. However, the relationship between current production decisions and prices is also affected by the contract portfolios of various uranium producers and how much they are exposed to the spot market. ERI estimates that the share of U.S. production coming from companies that are effectively unhedged, with no long-term contracts at higher prices, has declined from about 25% in 2012 and 2013 to just 3% in 2015 and 2016. 2017 ERI Report, 121.

In addition to prices, production decisions are also related to company-specific production strategies such as Cameco's decision to limit its production to its three most efficient large mines in Canada and Kazakhstan. One commenter opined that even if EM's transfers are eliminated, that the level of U.S. production would not increase because U.S. uranium production is less competitive than other mines so producers would ramp up production at their most efficient mines outside the U.S. first. That commenter also noted that if the 2015 percentage of U.S. to non-U.S. supply is applied—EIA reports that 94% of the uranium delivered to U.S. utilities in 2015 was foreign origin—to replace supply displaced by DOE inventory, then the resulting increase in U.S. sales would be a very small amount. RFI Comment of FBP, at 6–8.

Based on the spot price at the end of March 2017, it does not appear that adding the estimated incremental $1.40 impact of EM transfers at the Base Scenario levels as compared to no EM transfers back to that spot price would incentivize additional U.S. production. ERI states that term prices would still be below the level required for new conventional production to move forward, but notes that some lower cost in situ production may be able to move forward at current term prices.

In addition, realized prices of U.S. producers were presented in the previous section. It does not appear that the incremental $1.40 change in spot price between no uranium transfers by EM and transfers at the current rate would cause realized prices to be below production costs at any particular facility, especially with the limited number of companies that remain unhedged. DOE recognizes that

receiving prices barely above production costs would not provide enough return to justify investing in production, as a producer requires a certain amount of expected margin. Even considering a small effect on the margin, DOE concludes that ceasing EM transfers entirely would not cause U.S. producers to increase production levels substantially in the near-term.

Some NIPC commenters reported that they had to reduce production levels in response to low uranium market prices. UPA indicated that domestic production had declined from 4.9 million pounds in 2014 to 2.9 million pounds in 2016. Comment of UPA, at 13. DOE recognizes that production levels are lower but not in their entirety attributable to DOE transfers. DOE believes that it is an appropriate implementation of the analytical approach discussed above to compare the likely state of affairs with the considered transfers and without the considered DOE transfers in order to understand the impact reasonably attributable to its transfers. DOE has drawn this comparison in concluding that continuing transfers under the Base Scenario would not result in U.S. production being markedly lower than it would in the absence of DOE transfers.

3. Employment Levels in the Industry

DOE has considered information from EIA reports relating to employment in the domestic uranium production industry. EIA's most recent Uranium Production Report states that employment stood at 625 person-years in 2015, a 21% decrease from the 787 person-years in 2014. EIA, 2015 Uranium Production Report, 10 (May 2016). EIA notes that this is the lowest level since 2014. Exploration employment was 58 person-years, down from 86 in 2014 and 149 in 2013, a 33% and 61% drop respectively. Mining employment was 251 person years, an increase of 2% from the 246 level of 2014 but a 36% decline from the 2013 level of 392 person-years. Milling and processing employment decreased 32% from 2014. EIA further reports that reclamation employment declined 28% to 116 person-years from the 2014 level of 161 person-years, and 42% from the 199 employed in reclamation in 2014, a 12-year high. Employment for 2015 was in nine states: Arizona, Colorado, Nebraska, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

In its analysis, ERI compared EIA's employment figures with changes in uranium spot and term prices. Based on a statistical correlation, ERI infers that employment responds to changes in price, observing that mining, milling and processing employment was more closely correlated with term price and exploration employment with spot price. 2017 ERI Report, 64–65. ERI then uses this correlation to estimate that the decrease in uranium prices over the course of 2012–2015 resulted in employment lowered by an average of 30 person-years or that employment was 3.1% lower in those four years than if no releases had occurred. Using the cumulative methodology, the correlations indicate than the DOE transfers lowered employment by an average of 73 person-years during 2012–2015, or lowered by 7.2%. 2017 ERI Report, 66.

Looking forward, ERI correlates employment and price over the 10-year period 2017–2026 for the Base Scenario, which represents the current rate of EM transfers, and estimates an average loss of 19 person-years or a 2.9% reduction in employment over the ten-year period. The cumulative method yields an employment loss of 40-person-years or 6.0% over the 10-year period. Using the cumulative methodology, under Scenario 1 (halting EM transfers), employment would still be lowered by an average of 31 person years or 4.7%. Thus, the marginal employment effect based on the cumulative methodology between EM transferring uranium at current levels versus not transferring uranium is a change in average employment over the next ten years is 9 person-years, or 1.3%. It is important to note the cumulative effect of past releases is already in place and that transfers that occurred in past years will continue to have an impact in future years.

Using their employment-spot price correlation, ERI estimates that uranium industry employment is expected to decline by an additional 111 person-years from the 2015 level. ERI opines that this is consistent with announcements that have been made in the domestic industry. 2017 ERI, 65.

Some commenters stated that the uranium production industry has lost half its workforce since May 2012. RFI Comment of Energy Fuels, at 3; RFI Comment of Uranium Producers of America, at 4. EIA figures demonstrate a 48% loss in employment from 2012 to 2015. EIA Uranium Production Report (May 2016), 9. However, for predicting the effect of DOE's transfers it is important to understand what portion of recent employment decreases is reasonably attributable to past DOE transfers. No commenter attempted such an estimation. While it is difficult to infer causal connections between employment and any particular market phenomenon, DOE thinks it is likely that most of the reduction in employment in the mining industry since 2011 can reasonably be attributed to the downturn in the demand for uranium, primarily due to the Fukushima events and premature closure of nuclear plants.

DOE believes that ERI's method for attributing an employment effect to DOE transfers is reasonable. ERI's method is based on an empirical observation that prices (particularly the two-year moving average of price) have been strongly correlated with employment over the last decade. This correlation exists despite the fluctuations in market conditions that have taken place in that period. The relatively small price effects likely to result from DOE's transfers are much smaller than the price variations of the past decade. Therefore, the correlation ERI observes should hold true for these small price effects. In addition, it is reasonable to expect that prices and employment will continue to correlate in such a way, because the correlation reflects persistent market phenomena. DOE expects that a producer increases or decreases employment in order to increase or decrease production, and it does so in response to increases or decreases in the price it will receive. For any given producer the relationship between employment and price will depend on multiple factors such as the producer's cost of production and its cost structure (*e.g.* what proportion of cost depends on employee numbers) and the producer's sales/contracting structure and realized prices. Aggregated over producers, the result would be the sort of correlation between prices and employment that ERI observes.

Several NIPC commenters indicated that they had been forced to reduce employment levels due to continued weakness in the uranium markets. UPA in their comment at 15 noted that employment fell by 45.9% (531 jobs) from 2013 to 2015 and that in 2016 several UPA members announced they were anticipating further employment cuts. While industry did not predict the impact of future DOE transfers, as noted above, based on ERI's cumulative methodology, the marginal effect of EM transfers on employment is expected to average 9 person-years or 1.3% over the next 10 years. Given the size of recent employment fluctuations and the size of future expected changes (in the 100s of person-years), this effect is well within the range of existing fluctuations. Further, the employment effect of DOE transfers is not expected to be large enough to negatively affect the retention of intellectual experience and ''know-how'' in the industry.

4. Changes in Capital Improvement Plans and Development of Future Facilities

As stated above, ERI reports that five new production centers began operation since 2009: Two in 2010, one in 2013, one in 2014, and one in 2015. 2017 ERI Report, 67. ERI explains that the new production centers may have been able to begin operations only because they were supported by fixed price term contracts that were signed when prices were substantially higher than they are currently—*i.e.* $55 to $70 per pound term price. At least one of these companies has directly stated that its project would not have been able to proceed if the initial contracts had been made at the then current price levels—$45 to $50 per pound term price. ERI also reports that some owners of proposed conventional mines outside the U.S. have stated that prices in the range of $60 or more per pound would be necessary for further development. 2017 ERI Report, 73.

EIA reports that U.S. uranium production expenditures were $119 million in 2015, down by 14% from the 2014 level. EIA reports that uranium exploration expenditures were $5 million and decreased 56% from the 2014 level. EIA, 2015 Domestic Uranium Production Report, 2 (2016). ERI looked at the average production cost plus development drilling costs, to show that ongoing costs have declined from $49/pound in 2012 to $37/pound in 2015. Production plus development costs for U.S. facilities are expected by ERI to average about $35/pound in 2016. 2017 ERI Report, 76.

Based on the above, ERI concludes, ''it does not appear that removing the DOE inventory from the market and adding back the $5 per pound cumulative price effect attributed to the DOE inventory material in 2016 . . . in the Base Scenario would necessarily increase current prices enough to change the situation regarding the viability of new production centers in the U.S., that is, current spot prices would remain less than $30 per pound and current term prices would still be less than $40 per pound.'' ERI goes on to suggest that higher price signals appear to be required to move forward with the development of new conventional mines in the U.S but notes that some lower cost ISL projects may still be able to move forward at current term prices (which include the DOE inventory price effect). '' 2017 ERI Report, 73–74.

In the UxC Uranium Production Cost Study (2015), UxC refers to facilities that are ''planned'' and that are ''potential.'' UxC notes that, [REDACTED]. UxC also notes that planned projects have higher risks than operating projects, which would necessitate higher rates of return. UxC Uranium Production Cost Study, 60. UxC states that there is a lower level of confidence in estimates about potential facilities. In addition, UxC states that [REDACTED]. UxC Uranium Production Cost Study, 62, (2015). As an example of some of the difficulties facing potential facilities versus planned facilities, UxC refers to a potential project in Virginia, where there is a statewide ban on uranium production.

UxC divides the planned and potential projects into cost bands. According to UxC, [REDACTED]. We believe that some of the differences between ERI and UxC may be attributable to the assumptions regarding the construction of production cost factors, such as reclamation costs, and the fact that UxC's 2015 report does not take account of efficiency improvements at some facilities in the last 18 months.

DOE's task is to assess what the state of affairs would be with and without the planned transfers. DOE believes that industry reports such as UxC's, which provide data about the expected costs of actual projects, provide an additional foundation upon which to conduct its analysis. Since uranium prices decreased in the recent past, it is not surprising that producers have reduced their activities to develop new resources, as reflected in the EIA data. However, consistent with the analytical approach described above, the relevant question is what will be the effect on these activities of DOE transfers in the future.

DOE believes that one approach is to compare the expected market price with and without DOE transfers to estimated production costs at potential new production centers. The incremental impact of $1.40 per pound under the Base Scenario as assessed by DOE does not appear to markedly change decisions whether to develop future production centers. On this basis, DOE agrees with ERI's conclusion that whether DOE makes these transfers is not likely to affect the economic viability of new U.S. production centers in development.

Furthermore, DOE believes that future capital projects and production decisions are more likely to be based on future expectations about market prices, which we believe are tied closely to an expected increase in demand and the impact of recent production cutbacks, as well as contracting trends, rather than on a straightforward comparison of current market prices to production cost. New production centers are a long-term investment, and new facilities require several years of lead-time before production can begin. Many producers are unwilling to bring a new facility into production without long-term supply contracts in place that reflects expected market conditions.

Additionally, as a long-term investment, the outlook for financing any development or expansion of uranium projects should be tied to the long-term expectations for growth in nuclear power. However, the current outlook for certain plants facing premature closure, due in part to electricity market challenges, has colored the near-term outlook of investors and may have made financing these projects more challenging. Market capitalization is representative of a company's ability to raise funds needed to move a project through licensing, which can take many years, as well as through initial project development. ERI observed that the market capitalization of the smaller mining companies is more sensitive to changes in the spot market price compared to the larger companies. 2017 ERI Report, 70.

Some NIPC commenters indicated the necessity to suspend development plans or to limit production expansion. One indicated it was deferring well-field development. Another commenter noted a drop in EIA's reported development and exploration expenditures and suggested these numbers be used as a proxy to measure corporate decisions on capital expenditures. DOE believes the overall market pricing condition is the most significant driver for capital development plans. Based upon our analysis of price effect of future transfers, DOE does not believe that its near-term future transfers will have an adverse material impact on uranium mining industry development plans.

DOE concludes that transfers at the Base Scenario level, which represent about 4% of global supplies in 2017–2019, seem unlikely to change whether a uranium project proceeds as the other market forces and expectations will have significant influence on these longer-term decisions.

5. Long-Term Viability and Health of the Industry

ERI reports that five new production centers began operation since 2009: Two in 2010, one in 2013, one in 2014, and one in 2015. 2017 ERI Report, 67.

ERI also presents its future expectations regarding demand for uranium. ERI's most recent Reference Nuclear Power Growth forecasts project global requirements to grow to

approximately 190 million pounds annually by 2025. ERI attributes this increase in global requirements to an expansion of nuclear generation in China, India and South Korea, as well as new nuclear power entrants. While global demand for uranium is expected to increase, projected U.S. requirements will remain generally steady. 2017 ERI Report, 18–19. Overall, ERI's Reference Forecast for total world nuclear power generation capacity is consistent with a steady average annual nuclear capacity growth rate of 2% through 2035. A 9% decline is projected in the U.S. by 2035, with a 30% decline in Western Europe. 2017 ERI Report, 7. ERI notes that its Reference Forecast for nuclear fuel requirements in its 2017 Report is lower than its Reference Forecast in its 2015 Report due to assumptions of a slower pace of restart of Japanese reactors and the announced and projected premature closing of nuclear power plants in the U.S. and Western Europe. A reduction in nuclear power in France and slower than previously projected growth of nuclear power in Russia contribute to the lesser increase in nuclear capacity growth between 2020 and 2026. 2017 ERI Report, 4–5.

There are a number of important market factors that have influenced the relationship between supply and demand (hence price) since DOE inventory transfers began. These other factors include: Demand losses due to the Japanese reactor shutdowns following the Fukushima Daiichi accident, demand losses due to changes in German energy policy, increased uranium production in Kazakhstan, increased secondary supply created using excess enrichment capacity (both underfeeding and upgrade of Russian enrichment tails), the planned ramp-up of Russian uranium under the Suspension Agreement, and the end of the U.S. Russian HEU Agreement in 2013. The effect of DOE inventory can be considered in the broader context of other market factors. ERI notes that DOE inventory was equivalent to about 6% of all the uranium market factors (including DOE) in 2012, rising to 9% in 2013–2014 before declining back to 7% in 2016. ERI predicts that the total of all the non-DOE uranium market factors is expected to remain fairly constant over the next decade as the slow increase in Japanese reactor restarts is offset by additional retirements in Germany. The Base Scenario DOE share remains in the 7%–8% range with the exception of 2020 and 2021 when it drops to 5% and 1%, respectively. If Scenario 1 DOE inventory is assumed, the DOE share declines to just 1% over the next decade. Scenario 2 averages 6% while Scenario 3 averages 8% in 2017–2026. 2017 ERI Report 100–101.

The TradeTech Report in the UPA RFI comments cites many of the same market factors which ERI has accounted for, including persistent oversupply in the uranium market and reduced demand as a result of premature plant closures, as well as the DOE supplied uranium.

Several commenters in response to the July 2016 RFI predict a recovery in either spot or term uranium prices. Cameco, in its comment, states that while ''the long-term future of the uranium industry is strong, the market remains oversupplied due in part to the slow pace at which Japanese reactors have come back on line since the Fukushima accident and the closure of a number of U.S. reactors.'' RFI Comment of Cameco, at 1.

DOE recognizes that, as with any prediction, the future course of events may differ from forecasts. However, as explained in this analysis as well as in the 2015 Secretarial Determination and Analysis, DOE believes it is possible to forecast reactor requirements with a fairly high degree of precision. The various sources DOE has consulted, including the ERI report, offer similar forecasts, and DOE concludes it is appropriate to rely on those forecasts.[40] Alternately, forecasts of production may be somewhat more uncertain. DOE draws similar conclusions in this Determination as in 2015: In aggregate, overall forecasts of aggregate supply are appropriate predictions of the likeliest course of events, and the various sources DOE has consulted offer similar forecasts, and DOE concludes it is appropriate to rely on them.

Commenters note that DOE transfers have affected and will affect the industry in other ways. ConverDyn stated that uncertainty related to DOE uranium transfers adds to the difficult conditions currently facing the industry. RFI Comment of ConverDyn, Enclosure 1, at 2. Energy Fuels Resources (Energy Fuels), in its comment, hypothesizes that the value of domestic uranium mines and projects has diminished due to declining uranium prices since 2011 and an oversupplied market. RFI comment of Comment of Energy Fuels, at 2. Energy Fuels notes that ''persistent oversupply from price insensitive sources and limited uncommitted demand.'' RFI Comment of Energy Fuels, at 3. This view is reiterated in RFI comments by the New Mexico Mining Association, noting that ''DOE's material effectively consumes any available uncommitted demand available to (potential New Mexico) producers.'' RFI Comment of New Mexico Mining Association, at 1.

Additionally, a number of commenters have pointed out that excess inventory needs to be absorbed before a market recovery can occur. Commenters point to EIA data showing an increase in U.S. utility inventory. Energy Fuels and the Uranium Producers of America state that, ''the excess supply is absorbed primarily by the trading community that then finances the material for forward sales. As a result, this delays the prospects for a price recovery by ''stealing'' future uncommitted demand that would otherwise be available in upcoming years.'' RFI Comment of Energy Fuels, at 5; RFI Comment of UPA, at 7.

Energy Fuels also remarks, ''[a]s more reactors go offline and higher priced long-term pre-Fukushima legacy contracts expire, along with DOE material continuing to enter the market, conditions will continue to deteriorate for the production industry.'' Comment of Energy Fuels, at 5. Additional commenters shared this view. FBP commented that U.S. producers are ''far less competitive than available non-U.S. supply'' and that non-U.S. producers are better poised to meet any increase in demand because they can provide material at production costs that are below those of U.S. producers. RFI Comment of FBP, at 5. UxC's Uranium Production Cost Study supports the view that [REDACTED].

Regarding supply, FBP notes the increase in global production since 2007, despite falling prices and reduced reactor demand. RFI Comment of FBP, at 5. ''The failure of primary supply to reduce production to match needs is encouraged by long-term contracts at higher than current spot market prices and the significant supply controlled by Sovereign governments.'' Citing the NAC International Fuel-Trac data base, FBP notes that ''it is estimated that around 60% of the 2016 production was controlled by Governments,'' and suggests that, ''[d]ue to the large excess worldwide production increases, neither spot market prices, nor U.S.

[40] DOE notes that even though the 2015 Secretarial Determination and Analysis described an expected price recovery predicted by various market forecasts, uranium prices have decreased since May 2015. Despite that decrease, it is notable that those same market forecasts continue to forecast an increase in price, although they have adjusted the expected timeline for such a recovery. As emphasized in the 2015 Determination and Analysis, this is to be expected given the uncertainty of future market predictions, especially in the short-term. Nevertheless, DOE continues to believe that over the long-term, the rough course of future supply can be predicted with a reasonable degree of certainty.

production competitiveness are expected to improve appreciably in the near-term.'' RFI Comment of FBP, at 8. DOE notes that the largest producer in the world—Kazakhstan—has indicated that it will reduce production by 10% in the coming years. This will help bring supply and demand into balance sooner than if they had continues to produce at prior levels. FBP also suggests that exchange rates have affected competitiveness resulting in lower effective production costs for non-U.S. suppliers. RFI Comment of FBP, at 10. [REDACTED] UxC in their Uranium Market Outlook, Q1 2016, 6 and Uranium Production Cost Study, 107–108.

The Wyoming Mining Association suggests that the Department consider drilling as a ''harbinger metric for the uranium recovery industry's maintenance and growth.'' RFI Comment of Wyoming Mining Association, at 2. EIA reports that the number of holes drilled for exploration and development in the U.S. in 2015 was 1,218, down from 11,082 in 2012 and 5,244 in 2013, declines of 86% and 71%, respectively. Similarly, EIA reports 878 thousand feet drilled in 2015, down from 7,156 thousand feet in 2012 and 3, 845 thousand feet drilled in 2013, declines of 88% and 77%, respectively. EIA, 2015 Domestic Uranium Production Report (2016), at 3. UxC points out that during periods of sustained low prices, development is discouraged and higher price mines may be forced to close. [REDACTED] UxC Uranium Market Outlook, Q1 2016, 6.

Even if existing production centers continued producing uranium at their current rates, prices could be expected to increase as requirements increase. Consistent with the ordinary operation of supply and demand, higher prices would be necessary to bring additional supplies into the market. In fact, as existing production centers are depleted, the predicted replacements will have slightly higher production costs. Thus, higher prices will be necessary in the future even to maintain production at current levels. For these reasons the price of uranium is likely to increase over the coming decade.

Based on the incremental impact of DOE EM transfers on price, and the predicted future increases in price, these DOE EM transfers will not prevent new facilities from coming online, but could potentially affect the timing of such supply additions. DOE does not believe that this impact is significant enough to appreciably affect the long-term viability and health of the industry.

FBP, in its NIPC comments at 3 noted that FBP's subcontractor Traxys has sold DOE–FBP–Traxys material to a Wyoming uranium production who is using the purchased material to deliver on high-priced contracts. FBP notes that ''this support was a direct result of the U.S. miners calling upon the Department and FBP to make DOE uranium available to U.S. producers that they could then deliver into their long-term contracts.'' FBP notes that this offset foreign imports and that Traxys has extend this offer to other U.S. producers as well. Thus the bartered material, in some cases helps support U.S. industry. FBP NIPC comment, 3.

In addition, some NIPC commenters stated that the uranium market remains oversupplied due to a number of factors. Those factors include the slow pace of return of Japanese reactors after the Fukushima accident, early permanent shutdown of a number of existing U.S. reactors and delayed construction of new U.S. reactors. While UPA noted that this oversupply is an unhealthy situation threatening the long-term viability of the domestic market Cameco stated that they believe that the long-term future of the uranium industry is strong. NIPC Comment of UPA, at 16. DOE believes the world-wide construction of new reactors, return of many of the Japanese reactors and construction of new reactors in the United States will be positive for the uranium market and that the long term viability of the industry.

6. Russian HEU Agreement and Suspension Agreement

Section 3112(d) of the USEC Privatization Act requires DOE to ''take into account'' the sales of uranium under the Russian HEU Agreement and the Suspension Agreement. Consistent with this instruction, DOE believes this assessment should consider any sales under these two agreements that are ongoing at the time of DOE's transfers.

Under the Russian HEU Agreement, upon delivery of LEU derived from Russian HEU, the U.S. Executive Agent, USEC Inc., was to deliver to the Russian Executive Agent, Techsnabexport (Tenex), an amount of natural uranium hexafluoride equivalent to the natural uranium component of the LEU. The USEC Privatization Act limited the volume of that natural uranium hexafluoride that could be delivered to end users in the United States to no more than 20 million pounds U_3O_8 in each year after 2009. ERI has in the past analyzed material from the Russian HEU Agreement as part of worldwide secondary supply. DOE notes that the Russian HEU Agreement concluded in December 2013. Thus, there are no ongoing transfers under this agreement.

The current iteration of the Suspension Agreement, described above in Section I.D.3.ii, sets an annual export limit on natural uranium from Russia. 73 FR 7705 (Feb. 11, 2008). That agreement provides for the resumption of sales of natural uranium and SWU beginning in 2011. While the HEU Agreement remained active (*i.e.*, 2011–2013), the annual export limits were relatively small—equivalent to between 0.4 and 1.1 million pounds U_3O_8. After the end of the Russian HEU Agreement, restrictions range between an amount equivalent to 11.9 and 13.4 million pounds U_3O_8 per year between 2014 and 2020. 73 FR 7705, at 7706 (Feb. 11, 2008). As mentioned above, in September 2016, the Department of Commerce proposed to adjust the export limits under the agreement to take account of changes in projected reactor demand. The proposed adjusted limits would allow an additional 429,000 pounds U_3O_8 from Russia into the United States between 2016 and 2020. The additional amount varies by year, but on average, the proposed limits are 6.6% higher than current limits.

Material imported from Russia in accordance with the Suspension Agreement is derived from primary production rather than from down-blended HEU. The 2017 ERI Report takes account of uranium entering the United States under the current Suspension Agreement limits as part of total worldwide primary supply. The 2017 ERI Report does not consider the effect of the additional amount that would be allowed into the United States were the Department of Commerce to adopt the adjusted limits as proposed.

DOE believes that it is still appropriate to rely on ERI's analysis without adjusting for the proposed changes to the Suspension Agreement quota limits. As an initial matter, it bears emphasis that the volume of the proposed adjustment is small relative to the current limits under the Suspension Agreement, to United States requirements, and worldwide requirements. Nominally, the adjustment adds no more than 180,000 pounds U_3O_8 in any given year. Further, it is not clear that Russia would increase production of uranium concentrates to take advantage of this additional quota. Even without the change to the Suspension Agreement, Russia is still free to seek buyers for its uranium in other countries. More important, there is reason to believe that Russian suppliers would not take full advantage of the adjusted quota with respect to natural uranium. DOE understands that a

significant portion of Russian uranium entering the United States under the agreement enters via SWU-only contracts.[41] Unlike EUP, which contain the Russian uranium component, SWU-only imports do not. This is because the purchaser would be required under the contract to deliver to the seller an amount of natural uranium equivalent to that contained in the enriched uranium. That natural uranium would need to be purchased on the open market, *i.e.*, from non-Russian sources.

For these reasons, DOE's analysis takes sales of uranium under the Suspension Agreement into account as part of overall supply available in the market, and the proposed adjustments are small enough that even if they are adopted, the adjusted figures would not significantly alter DOE's analysis.

7. Mining Industry Conclusion

After considering the factors discussed above, DOE concludes that transfers under either the Base Scenario, which represents the current rate of EM transfers, or the lower transfer rate of 1,200 MTU per year beginning in May 2017 will not have an adverse material impact on the domestic uranium mining industry. As explained above, DOE transfers under the Base Scenario will continue to exert some downward pressure on the market price for uranium concentrates. However, the forecasted price effect of $1.40 per pound U_3O_8 reasonably attributable to DOE transfers is somewhat smaller than the effect attributable to transfers in the past few years. DOE believes that transfers at the lower rate will have a slightly lower effect on market prices.

Because the majority of deliveries of uranium concentrates take place under long-term contracts that allow producers to realize prices based on term prices prevailing at the time the contracts were entered and because essentially all U.S. producers have at least partially hedged from the spot price, DOE concludes that the average effect on the realized price of U.S. producers under current contracts is less than that amount. For future term contracts, price suppression associated with DOE transfers would decrease the base price of future long-term contracts, potentially decreasing the average realized price over the life of each contract. However, DOE concludes that this type of effect will be minimal because the impact of the transfers under either scenario is small and within the range of normal market fluctuations.

DOE transfers are expected to have a small effect on employment in the domestic industry, but the magnitude of this effect is well within the range of employment fluctuations the industry has experienced in the past due to market conditions unrelated to DOE transfers.

Even focusing on the entities most likely to be impacted—*i.e.,* producers that sell primarily on the spot market and are thus not as protected from fluctuations in the spot price—it is not likely that removing the price effect attributable to DOE transfers would be enough to materially change the relationship between price and cost for any producer with respect to production levels at currently operating facilities or decisions whether to proceed with developing new production centers. Both types of decisions involve considerations beyond current spot prices, and they likely will be based on expectations about future trends in market price. DOE concludes that, given the expected increases in future demand for uranium concentrates and, more importantly, the expected increases in market prices, the price effect attributable to DOE might delay decisions to expand or increase production capacity but would not change the eventual outcomes. DOE does not believe that these effects have the substantial importance that would make them ''adverse material impacts'' within the meaning of section 3112(d).

B. Uranium Conversion Industry

The domestic uranium conversion industry consists of a single facility, the Metropolis Works (MTW) in Metropolis, Illinois. This facility is owned and operated by Honeywell International Inc. MTW has a nameplate capacity of 15,000 MTU as UF_6. ConverDyn, Inc. (ConverDyn) is the exclusive marketing agent for MTW. MTW and ConverDyn may be referred to interchangeably, because the two appear to have essentially the same interests in uranium markets.

1. Prices for Conversion Services

Prices in the conversion markets are generally described in terms of spot and term price, like the uranium concentrates market. The following discusses the potential impact of DOE transfers on these two prices. For reference, as of April 17, 2017, UxC spot price indicator was $5.85 per kgU as UF_6, and the [REDACTED].[42] DOE obtained information about conversion services prices from Energy Resources International. In its NIPC comment, ConverDyn shared that conversion services spot prices are 30% lower and long-term prices 22% lower than compared with the prices used in the 2015 Secretarial Determination. NIPC Comment of ConverDyn at 1.

i. Energy Resources International Report

In the 2017 ERI Report, like the 2015 ERI Report, ERI estimated the effect of DOE transfers on the market prices for conversion services using a market clearing price methodology. As with the uranium concentrates, ERI conducted the clearing prices analysis on both an annual and cumulative basis, constructing individual supply and demand curves for conversion services and estimating the clearing price with and without DOE transfers. 2017 ERI Report, 44. ERI's clearing price effect on conversion services represents a change in the market-clearing price for spot prices. The same DOE transfer scenarios described in Section IV.A.1 were used in the analysis.

Like the uranium concentrates analysis, we first present the estimates of the price impacts in the market clearing models using the two different supply side approaches. It is important to emphasize that, under either approach, these numbers do not constitute a prediction that prices will decrease by the specified amounts following DOE transfers under a new determination and, further, that the impact of prior transfers is already taken into account by the market in the current spot prices.

To gain additional perspective, we then assess the impact of future DOE transfers under the cumulative methodology based on the difference in market clearing price in any given year between a scenario with zero EM releases of uranium (scenario 1) compared to the scenarios where EM uranium is released at different rates.

Using the market clearing price model, on an annual and cumulative basis, ERI estimates that DOE transfers will have the price effects on the conversion services industry listed in Tables 7 and 8, respectively.

[41] Taking information from the ERI Report on the proportion of material supplied under the Suspension Agreement in the form of EUP sales, DOE assumes at least 20% of material going to SWU-only contracts. 2017 ERI Report, 102.

[42] UxC, Ux Weekly, April 17, 2017 (Volume, 31, Number 16) at 1.

TABLE 7—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON CONVERSION PRICES IN $ PER kgU AS UF_6

[Annual market clearing approach]

	ERI Scenario 1—no EM transfers	ERI Base Scenario current level (1,600 MTU/year)	ERI Scenario 2 lower level (1,200 MTU/year)	ERI Scenario 3 higher level (2,000 MTU/year)
2017	$0.10	$0.40	$0.30	$0.40
2018	0.00	0.10	0.10	0.10
2019	0.20	0.60	0.50	0.50
2020	0.20	0.30	0.40	0.20
2021	0.00	0.00	0.10	0.00
2022	0.10	0.10	0.10	0.10
2023	0.10	0.10	0.10	0.10
2024	0.40	0.40	0.40	0.40
2025	0.50	0.50	0.50	0.50
2026	0.50	0.50	0.50	0.50
Average (2017–2026)	0.20	0.30	0.30	0.30

TABLE 8—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON CONVERSION PRICES IN $ PER kgU AS UF_6

[Cumulative market clearing approach]

	ERI Scenario 1—no EM transfers	ERI Base Scenario current level (1,600 MTU/year)	ERI Scenario 2 lower level (1,200 MTU/year)	ERI Scenario 3 higher level (2,000 MTU/year)
2017	$0.90	$1.10	$1.10	$1.10
2018	1.10	1.10	1.10	1.20
2019	1.60	2.30	2.10	2.30
2020	1.50	1.90	1.90	1.80
2021	0.10	0.70	0.80	0.70
2022	0.20	0.20	0.20	0.20
2023	0.10	0.10	0.10	0.10
2024	0.40	0.40	0.40	0.40
2025	0.50	0.50	0.50	0.50
2026	0.50	0.50	0.50	0.50
Average (2017–2026)	0.70	0.70	0.90	0.90

We next determine the marginal price effect under the cumulative methodology. For the same reasons described in Section IV.A.1, the impact of future DOE transfers is best understood and expressed as the marginal or incremental difference between zero EM transfers compared to scenarios with EM transfers. Scenario 1 serves as the point of reference for the analysis of price effects from the other scenarios of DOE releases because it includes the price effects from prior DOE uranium inventory releases plus an increment for the NNSA transfers but no EM transfers.

Table 9 provides the price effects estimated by ERI for the varied scenarios of EM transfers under the cumulative method expressed as the marginal price effect.

TABLE 9—MARGINAL PRICE EFFECT OF VARIED RATES OF DOE TRANSFERS ON CONVERSION PRICES IN $ PER kgU AS UF_6—CUMULATIVE METHOD

[Cumulative market clearing approach]

	ERI Scenario 1—no EM transfers	ERI Base scenario current level (1,600 MTU/year)	ERI Scenario 2 lower level (1,200 MTU/year)	ERI Scenario 3 higher level (2,000 MTU/year)
2017	$0.00	$0.20	$0.20	$0.20
2018	0.00	0.00	0.00	0.10
2019	0.00	0.70	0.50	0.70
2020	0.00	0.40	0.40	0.30
2021	0.00	0.60	0.70	0.60
2022	0.00	0.00	0.00	0.00
2023	0.00	0.00	0.00	0.00
2024	0.00	0.00	0.00	0.00
2025	0.00	0.00	0.00	0.00
2026	0.00	0.00	0.00	0.00
Average (2017—2026)	0.00	0.20	0.20	0.20

Table 9 illustrates that, for example, the price effect attributable to DOE transfers under the Base Scenario in 2017 would be 0.20, the difference between the cumulative price effect under the Base Scenario ($0.30) and the cumulative price effect under Scenario 1 ($0.10). In other words, prices would be suppressed by the marginal or incremental amount of $0.20 if DOE pursues the EM transfers under the Base Scenario, not $0.30, as the current price already includes the price suppression of $0.10 (Scenario 1 point estimate price) from previous DOE releases.

ERI also presented information on the cumulative clearing price effect relative to ''No DOE'' clearing price for uranium, where the ''No DOE'' clearing price assumes that DOE releases from 2009 onward were zero. 2017 ERI Report, 60. Table 4.8 in the ERI Report provides assessment of price impacts going forward, for the period 2017 to 2026, and the estimated change in the conversion clearing price attributable to the DOE inventories under the four scenarios relative to the ''No DOE'' market prices. The cumulative percentage change in prices noted in ERI's Table 4.8 also can be expressed as a marginal effect to better represent how future EM inventory releases would affect prices.

Table 10 presents the marginal price effect expressed as a percentage of market price.

TABLE 10—CUMULATIVE MARGINAL PRICE EFFECTS AS PERCENTAGE OF ''NO DOE'' CLEARING PRICE

	ERI Base scenario current level (1,600 MTU/year) marginal %	ERI Scenario 2 lower level (1,200 MTU/year) marginal %	ERI Scenario 3 higher level (2,000 MTU/year) marginal %
2017	2	2	3
2018	1	1	2
2019	5	4	5
2020	3	3	2
2021	5	5	5
2022	0	0	0
2023	0	0	0
2024	0	0	0
2025	0	0	0
2026	0	0	0
Average (2017—2026)	3	3	3

For example, under Scenario 1, where EM transfers are halted starting in 2017, average conversion prices for the period 2017–2016 would be 3 higher (7% − 4%) than under Scenario 1. Stated otherwise, the percentage price effect for each scenario other than Scenario 1 is the difference between the cumulative percentage for the Scenario in question and the cumulative percentage change for Scenario 1. *E.g.,* in year 2020, under the Base Scenario prices would be 3% (15% − 12%) higher than under Scenario 1.

As with uranium concentrate pricing, DOE has considered the 2017 ERI Report and ERI's explanation of its market clearing price methodology with respect to the conversion market. With respect to the spot market, DOE's conclusions regarding ERI's methodology apply equally to conversion as they do to uranium concentrates. However, for the reasons explained in the 2015 Secretarial Determination and Analysis, DOE believes that the clearing price model will greatly overestimate the effect of DOE transfers on the conversion *term* price. In essence, ERI's market clearing approach—either annual or cumulative—assumes that the conversion price arises from a competitive market price-setting mechanism. This does appear to be the case for the spot market, which has a large number of suppliers and appears to quickly respond to changes in supply in demand. The term price, however, does not appear to arise from a competitive price-setting mechanism. Certain aspects of the conversion services market lend support to this conclusion. For one, the term conversion market is highly concentrated and consists of a very small number of primary suppliers. Highly concentrated markets such as these may be susceptible to parallel pricing such that pricing decisions may be unresponsive to changes in supply and demand. In addition, demand for nuclear fuel is relatively inelastic in the mid-term—this is particularly true for conversion services given that conversion makes up a smaller proportion of the price of enriched uranium product than enrichment or uranium concentrates. Meanwhile, conversion is a necessary step in the fuel cycle, and conversion facilities operate with a relatively high degree of investment compared to their variable costs. To ensure that conversion capacity remains available, it could be rational for utilities to accept and commit to higher prices than a free price mechanism reflecting available supply and demand would produce.

This is consistent with how the conversion term price has reacted in recent years to changes in supply in demand. The 2015 Secretarial Determination and Analysis described the response of the conversion term price to market changes prior to 2015. Since then, although the conversion term price has fallen, it still remains at more than twice the current spot price. Furthermore, there is reason to believe that the recent decline in conversion term price does not necessarily reflect a decrease in the price that primary converters are able to command for long-term contracts. As reported by UxC, [REDACTED]. UxC Conversion Market Outlook at 33. [REDACTED] *Id.* at 32. [REDACTED] *Id.* at 51. This supports the notion that utilities have been willing to accept and commit to higher prices than a competitive price mechanism would produce. For these reasons, although ERI's market clearing approach provides a reasonable estimate of the effect of DOE transfers on the conversion spot price, it likely significantly overstates the effect on the conversion term price.

ii. Effect of DOE Transfers on Market Prices

Based on the foregoing discussion of market analyses and DOE's consideration of the different

methodologies, DOE concludes that pursuing the level of transfers under the Base Scenario will suppress the spot market price of uranium conversion on average in the next decade in either $0.20 or $0.30 per kgU, based on the marginal cumulative clearing price approach and the annual clearing price approach, respectively. After analyzing all of the estimates available, DOE bases its conclusions here on the largest possible price effect of the transfers in any given year, in this case the annual market-clearing price effect of $0.30 per kgU. This estimate is approximately the same as the average price effect for the near-term—from 2017 through 2019—of $0.30 (cumulative) or $0.36 (annual) per kgU. Further, DOE transfers will be conducted at rates even lower than the Base Scenario, closer in effect to those posited in Scenario 2, creating a positive effect on market prices of roughly $0.10 in 2017 as compared to the Base Scenario, the difference between the Base Scenario price effect ($0.40) and Scenario 2 price effect ($0.30) under the annual method. DOE further concludes that its transfers will have essentially no effect on the term price for conversion.

Similar to uranium concentrates, the significance of price suppression at this level depends, in part, on current and forecasted market prices. UxC's Nuclear Fuel Price Indicators, showed $5.85 per kgU as the spot market price at the end of March 2017. The forecast price effect reasonably attributable to DOE transfers ($0.30 per kgU) represents about 5% of these current market values. This result is more conservative than that shown in Table 10, which reflects in 2017 only a 2% marginal cumulative price effect for DOE transfers in the Base Scenario under the ''No DOE'' clearing price approach. However, in any case, most conversion is sold under long-term contracts not using spot prices, and the sole domestic converter makes most of its sales that way.

Moreover, the price effect of $0.30 is within the range of market fluctuations experienced in the conversion industry in recent years. As previously noted, ERI's statistical model of price volatility on an annualized basis (as shown in 2017 ERI Report, Figures 4.34 and 4.35) illustrates the conclusion that historical price volatility is noticeably higher for the uranium and conversion markets than for the enrichment market over the long term, although enrichment term price volatility has been higher and conversion term price volatility has been lower, relatively, in the last two years. 2017 ERI Report, 94–96. For example, the spot prices of conversion from January 2015 to December 31, 2016 declined by 30%, and from December 31, 2016 to the March 2017, declined by 2.5%. For term prices, the change from January 2015 to December 31, 2016 was 19%. Price effects that are about 5% are not substantial or outside historical experience in the conversion markets.

It is also appropriate to compare the price effect in future years to forecasted market prices in those years. Using near-term projected spot market prices from UxC's Conversion Market Outlook—Dec 2016, at 78, [REDACTED], DOE calculates that the average price effect of planned DOE transfers under the Base Scenario assuming a price effect of $0.30 per kgU would cause an average percent decrease in the near-term of 5% per year. Looking at UxC's 10-year average price projections yields a [REDACTED] price change. While ERI's market-clearing price effect is not intended to be a direct price forecasting tool, using the ERI Reference Case price forecasting data allows us to derive an approximate percentage future effect. This is also in line with the average percentage cumulative marginal effect calculated based on ERI's projected percentage changes.

iii. Effect on Realized Prices

A principal mechanism through which a change in market price could impact the domestic conversion industry is through the effect on the prices that they actually receive for the uranium they sell—the ''realized price.'' As with uranium concentrates, market prices would affect MTW chiefly through their effect on the price it actually realizes for its services. Since the domestic conversion industry consists of only one producer, the effect of DOE transfers depends on the mix of contracts on which MTW's services are sold: the proportion of spot and term contracts, and the extent to which these contracts lock in prices higher (or lower) than current market prices or conversely expose MTW to spot prices. ERI projects that global uranium conversion services requirements will average 58.7 million kgU/year between 2017 and 2019. U.S. requirements are expected to average about 17.2 million kgU in the same timeframe. 2017 ERI Report, 84. Based on transfers at the Base Scenario level, ERI projects that DOE transfers will constitute approximately 4% of the global requirements for conversion services in 2017–2019. 2017 ERI Report, 43.

No commenter provided specific information about the current realized prices achieved in the conversion industry, and no commenter directly estimates the effect of DOE's transfers on realized prices. As stated above, DOE understands that the conversion market generally relies on mid- and long-term contracts. UxC Conversion Market Outlook—December 2016, 30–31. [REDACTED] [43] [44] [45] *Id.* at 33. [REDACTED] *Id.* at 29. [REDACTED] *Id.* at 29.[46] Assuming this spot contracting activity was divided proportionately by production among the Western converters based on UxC's estimated production levels over that time period, ConverDyn's share would have been roughly 1,000,000 kgU spread out over three years.[47] If trends continue at this rough rate, DOE conservatively estimates that ConverDyn's exposure to the spot market price could be no more than 350,000 kgU per year, or less than 4% of estimated production over that period.[48]

To the extent that ConverDyn engages in spot sales, they represent no more than 4% of its total sales, and likely represent significantly less. Considering this in combination with ConverDyn's past statements about its contracting practices, namely that ConverDyn's long-term contracts are priced at the prevailing term price (with some escalation for inflation), and that [REDACTED], DOE concludes that ConverDyn has virtually no exposure to the spot price.

As explained above, the Department concludes that the term price will remain relatively stable despite DOE's transfers. Therefore, DOE concludes that planned uranium transfers under the Base Scenario will not appreciably affect ConverDyn's realized price for its services.

2. Production at Existing Facilities

There is only one existing conversion facility in the United States, the Metropolis Works facility (MTW) in Metropolis, Illinois, operated by

[43] UxC Conversion Market Outlook, December 2016, 68.

[44] UxC Conversion Market Outlook, December 2016, 51.

[45] UxC Conversion Market Outlook, December 2016, 71.

[46] [REDACTED], *Id.* at 29.

[47] The converters are typically divided into two groups, the ''Western'' converters and the ''non-Western'' converters in Russia and China. The Western converters consist of MTW, Cameco's Port Hope facility in Ontario, Canada, and AREVA's Comurhex facility in France. There is also a very small conversion facility in Sao Paulo, Brazil, with a capacity of approximately 100,000 kgU as UF6.

[48] DOE believes this is a conservative estimate for several reasons. First, as mentioned above, the primary converters have been a significant *purchaser* in the spot market in recent years; in fact, [REDACTED]. Second, 2016 spot contracting activity was lower than in previous years, a trend that may continue into 2017 and 2018. Third, it appears that not all spot contracting for conversion in 2015 and 2016 were filled by primary supply, even when the seller was a primary converter. [REDACTED] *Id.* at 29

Honeywell International. ConverDyn is the exclusive marketing agent for conversion services from this facility. RFI Comment of ConverDyn, at 1; 2015 ERI Report, 64. This section focuses on the potential effects of DOE transfers on production at MTW, including the impact on sales volumes and changes in average production costs.

ERI estimated the effect of DOE transfers on production at MTW based on a series of assumptions about ConverDyn's production volume and market share derived in part from various statements from ConverDyn.[49] Based on publicly available information, including a declaration presented by ConverDyn in support of litigation against DOE, DOE's 2015 Secretarial Determination and Analysis, and an estimate by another converter, ERI estimates that ConverDyn's annual production volume is 10 million kgU. 2017 ERI Report, 81.

In estimating the effect of DOE transfers on ConverDyn's sales volume, ERI assumes that 50% of the material EM transfers in exchange for cleanup services and 100% of all other DOE material enters the U.S. market. 2017 ERI Report, 82. Based on statements from ConverDyn, ERI assumes that ConverDyn's current share of the U.S. market for conversion services is 25% and that its share of the international market is 24%. 2017 ERI Report, 86.

ERI also estimates the effect of DOE transfers on ConverDyn's production costs. To calculate this effect, ERI assumes that ConverDyn's production cost would be $15 per kgU if DOE material was not being introduced into the market. ERI further assumes that 80% of Metropolis Works' costs are fixed. ERI then applies these assumptions to its estimate, described above, of the effect of DOE transfers on ConverDyn's sales volume. The reasoning being, if MTW produced additional conversion in the quantities estimated, the 80% fixed cost would be spread over a greater sales volume, and only 20% of the costs would scale to match production.

A summary of ERI's estimates of the effect of DOE transfers on ConverDyn's sales volume and production costs appears in Table 11. Applying ConverDyn's U.S. market share of 25% and the remaining world market share of 24% to the volume of DOE inventory expected to be introduced into the market in 2018, results in a volume effect of 0.4 million kgU in the U.S. market and 0.2 million kgU effect in the remaining world market for a total of 0.6 million kgU, under the Base Scenario, for an increase in production costs of 5%.

In Scenario 1, in which UF_6 associated with prior releases of DUF_6 to ENW enter the market, the introduction of DOE inventory results in a decreased volume of 0.6 million kgU and increased production costs of 1%. The introduction of DOE inventory into the conversion market results in a decreased volume of 0.5 million kgU and increased production costs of 4% in Scenario 2 and a decreased volume of 0.7 million kgU and increased production costs of 5% in Scenario 3. 2017 ERI Report, 85–89.

As with ERI's price estimates discussed above, these estimates do not suggest that were DOE to transfer uranium in accordance with the Base Scenario, ConverDyn would lose the predicted volume of sales or that its production cost would increase. DOE has been transferring at or above the rate of the Base Scenario for nearly three years, and therefore these effects—or a similar level of effect—are currently being experienced by MTW due to transfers in prior years. Continued transfers at the Base Scenario rate would only continue these effects at the estimated levels.

TABLE 11—ERI'S ESTIMATE OF IMPACT OF DOE TRANSFERS ON CONVERDYN'S SALES VOLUME AND ESTIMATED PRODUCTION COST INCREASE

	Estimated change in ConverDyn volume (million kgU)	Production cost increase (percent change)
Base Scenario	0.6	5.0
Scenario 1	0.2	1.0
Scenario 2	0.5	4
Scenario 3	0.7	5

DOE believes that ERI's approach to estimating lost sales volume based on market share is reasonable. DOE also believes that ERI's approach to estimating the change in average per unit production costs that volume decrease is straightforward. Average per unit production cost can be calculated by dividing the total production cost by the number of units produced. If MTW's costs were 100% variable, then average production costs would not change, regardless of the volume produced. However, if some portion of MTW's costs are fixed, then a decrease in the number of units produced would lead to increased production costs, and vice versa. If the proportion of fixed costs, current production volume, and current per unit production cost are all known, the change in average production cost can be easily calculated. ERI looked to various public sources and estimates to provide a basis for its assumptions. DOE believes that this a reasonable approach for estimating the effect of DOE transfers on production cost at MTW. That said, DOE has other available information that suggest that certain of ERI's assumptions may be outdated. To account for this information, DOE has developed its own estimate for sales volume loss and change in production cost based on ERI's methodology but utilizing the slightly different assumptions described below.

ERI bases its estimate of MTW production levels at least in part on DOE's 2015 Secretarial Determination and Analysis. DOE has revisited and updated this information. In 2015, DOE relied on UxC's Conversion Market Outlook, [REDACTED]. UxC's most recent Conversion Market Outlook estimates [REDACTED]. UxC, Conversion Market Outlook, Dec. 2016, at 44. In addition, ConverDyn states in its comment in response to the NIPC

[49] The analysis below differs from the discussion above regarding production by the domestic mining industry. The two industries and markets have different characteristics. With respect to mining, the presence or absence of DOE transfers is expected to result in a small change in uranium prices. The result of a price increase or decrease would be to motivate a production increase or decrease, respectively, by the producers with marginal costs in the relevant range. By contrast, as discussed below, converters generally have relatively low variable costs. DOE estimates that ConverDyn's marginal cost is substantially lower than the current spot price for conversion. Thus, changes in price do not motivate production in the same way as in the uranium markets, and a different approach is warranted for estimating production changes.

that it has halved its production capacity. ConverDyn NIPC Comment, at 1. Honeywell's Web site similarly notes that ''Honeywell plans to reduce the production capacity of the Metropolis plant to better align with the demands of nuclear fuel customers.'' [50] ConverDyn does not state the numerical capacity of MTW after the announced production capacity reduction. However, another commenter refers to an announcement from Honeywell that the nameplate production capacity of MTW—previously reported at 15 million kgU—will be permanently reduced to 7 million kgU through ''physical changes to the conversion plant as well as through workforce reductions.'' FBP at 3. Other sources have also reported the reduction in MTW's capacity to 7 million kgU.[51] Given that this capacity reduction has been reported in multiple sources, DOE believes it is likely to be an accurate reflection of the upper bound of MTW capacity in the coming years.

Therefore, DOE has applied ERI's approach to estimating reduction in sales volume and production costs with the assumption that MTW capacity has a maximum of 7 million kgU. Using this figure, MTW can be expected to experience a reduction in sales volume of about 400,000 kgU in 2017, 500,000 kgU in 2018, and 600,000 kgU in 2019.[52] Using ERI's assumptions about fixed cost to variable cost ratio and ConverDyn's total production cost with DOE transfers, production costs would be expected to be higher by $0.80 on average between 2017 and 2019.

In addition, ConverDyn's comment in response to the RFI includes an enclosure with an estimate of its domestic cost of production for conversion services. ConverDyn RFI comment, Encl. 2. ConverDyn explains [REDACTED] *Id.* Altering this assumption in the above calculations would have a very minor effect on the estimates described above, regardless of which production level is assumed.[53] Therefore, DOE believes it is reasonable to rely on the estimate described above that DOE transfers will affect ConverDyn's marginal production cost by roughly $0.80 between 2017 and 2019.

In recent years MTW has experienced several significant disruptions in its business that are not attributable to DOE transfers. These disruptions have caused MTW's annual production to vary significantly [REDACTED].[54] Based on available information, it appears that MTW capacity may be permanently limited to an annual production of 7 million kgU, a figure that is less than half of MTW's previously reported nameplate capacity. DOE notes that the predicted decrease in volume reasonably attributable to DOE under either set of assumptions—about 600,000 kgU based on ERI's assumptions and as low as 400,000 kgU if MTW capacity is limited to 7 million kgU—are substantially smaller than the production decreases at MTW from these other disruptions. The production swings experienced at MTW in recent years have been as much as 7 times the magnitude of the sales volume decreases attributable to DOE. Given that ConverDyn has a significant proportion of fixed costs, these swings in production would be expected to alter ConverDyn's marginal production cost in a similar manner. Thus, the expected change in production cost—$0.80—is also well within the range of fluctuations experienced at MTW in recent years.

3. Employment Levels in the Industry

ERI assumes in its analysis a staffing level of 242 employees in 2017 [55] for a production level of 10 million kgU. Previously, as in 2015, ERI had estimated that Metropolis Works staffing would remain at 270 employees, with an annual production rate of 10 million kgU. In the 2015 Report, ERI noted that Metropolis Works restarted after an extended shutdown in summer 2013 with approximately 270 employees, which was a decrease from the previous employment of 334 people. 2015 ERI Report, 72–73; 2014 ERI Report, 71. Information on the Honeywell/Metropolis Works Web site [56] indicates that the plant employs 250 full-time employees. In January 2017, Honeywell announced a workforce reduction: ''Due to the significant challenges of the nuclear industry globally and the oversupply of uranium hexafluoride (UF_6), Honeywell plans to reduce the production capacity of the Metropolis plant to better align with the demands of nuclear fuel customers. Because of this, the company intends to reduce its full-time workforce by 22 positions, as well as a portion of the plant's contractor team. We are taking this action to better position the plant moving forward.'' [57] In its NIPC comments, ConverDyn noted that it has eliminated 87 positons since the last Secretarial Determination. NIPC Comment of ConverDyn at 1.

ERI makes estimates regarding the impact of DOE uranium transfers on employment using the assumption that staffing is proportional to production rate but notes the limitations of such estimates. ERI suggests that it is unlikely that staffing is directly proportional to production volume, thus characterizes their assessment as conservative. 2017 ERI Report, 90.

Based on ERI's assumed staffing level of 242 FTE and a production of 10 million kgU, assuming that staffing is proportional to production, then for every 100,000 kgU reduction in annual production, there would be a 2.4 FTE loss in staff. Under the Base Scenario, ERI attributes a 0.6 million kgU reduction in production volume to DOE sales, which results in a 14 FTE loss. This compares to a 0.2 million reduction in production volume attributable to DOE sales with no EM uranium transfers, which would result in a 5 FTE loss. Therefore, the impact on employment would be the difference between the impact under the Base Scenario and the impact under Scenario 1, with no EM transfers, or 9 FTE (14 FTE − 5 FTE).

A reduction in employment of 9 person-years is relatively small, particularly in comparison to MTW's reduction of approximately 64 after the 2012–2013 shutdown, and the 87 FTEs that ConverDyn has eliminated since the 2015 Determination. The industry has been able to weather employment losses much larger than any that could reasonably be attributed to DOE transfers. In addition, it is clear that other factors, in addition to production volumes will affect employment levels.

[50] *Statement from Honeywell, http://www.honeywell-metropolisworks.com/* (accessed Apr. 13, 2017).

[51] UxC has noted the reduction in capacity in a recent weekly report, UxC Weekly, April 10, 2017, at 3, and the World Nuclear Association has adjusted its world capacity information to reflect the decrease in capacity. *http://www.world-nuclear.org/information-library/nuclear-fuel-cycle/conversion-enrichment-and-fabrication/conversion-and-deconversion.aspx* (accessed Apr. 13, 2017).

[52] DOE notes that ConverDyn has maintained that its capacity reduction is permanent. If this is true and ConverDyn is producing at or close to its maximum capacity, ConverDyn would not be able to increase primary production to absorb additional production volume. Nevertheless, DOE will assume for the sake of this analysis that ConverDyn could increase production to account for the additional sales volume.

[53] In at least one of the calculations, the change is not evident after the estimated change in production cost is rounded to the nearest $0.10.

[54] UxC Conversion Market Outlook, December 2016, 44.

[55] ERI arrives at the 242 full-time employee (FTE) using information from press reports of staffing levels prior to the January 2017 reduction. 2017 ERI Report, 90.

[56] *http://www.honeywell-metropolisworks.com/* (accessed April 13, 2017).

[57] *http://www.honeywell-metropolisworks.com/message-from-the-plant-manager/* (accessed April 13, 2017).

4. Changes in Capital Improvement Plans and Development of Future Facilities

Neither ERI nor any of the commenters provide an estimate of the effect of DOE transfers on new facility development or capital improvement plans. While DOE's task is to assess the state of the domestic uranium conversion industry with and without DOE transfers, we believe that activities in the global conversion industry may in some cases be relevant for assessing how DOE transfers will affect the domestic conversion industry.

The Department is aware of limited uranium conversion development projects that are currently planned or underway outside the United States. AREVA's COMURHEX II facilities are under construction with full transition to the new COMURHEX II facility in the 2018–2021 period. In May 2016, Cameco and Kazatomprom announced that they are undertaking a feasibility study for a uranium conversion plant that will convert 6,000 metric tons to U_3O_8 annually. That agreement provides that if the joint refinery is built, Kazatomprom will have the option to obtain UF6 conversion services at Cameco's Ontario, Canada –based Port Hope conversion facility.[58] ERI also notes that expansion of Chinese conversion capacity is expected to meet indigenous requirements. Finally ERI notes that Russia's Rosatom Siberian Chemical Combine center is expected to add new capacity to come on line in 2019. 2017 ERI Report, 13.

DOE is not aware of any conversion development or expansion plans in the United States. However, press articles report that the Wyoming Business Council is looking at permitting changes that may be needed to allow for the construction of a uranium conversion facility in the State to allow for upgrading of uranium mined in Wyoming before leaving the state. The goal appears to situate Wyoming as a potential uranium conversion site when the market will support another facility.[59]

The Honeywell/Metropolis Web site notes that Honeywell has spent over $177 million in capital improvements over the last 10 years, including $50 million for safety upgrades required by the U.S. Nuclear Regulatory Commission (NRC).[60] In a message from the Metropolis Works Plant manager, the company notes that it intends to invest $10 million per year on projects that directly support health, safety and the environment.[61] ConverDyn has not stated in its Comment in response to the RFI or NIPC whether they have any intentions to make updates and capital improvements to the Metropolis facility. As mentioned above, Honeywell recently apparently announced that they will permanently reduce capacity to 7 million kgU, this reduction will be at least partially be achieved by workforce reductions. Based on this information, it does not appear that there are any plans to expand capacity at MTW in the near future, but presumably, production could theoretically be ramped up again with additional capital improvements.

Honeywell's current NRC operating license for MTW expires in May 2017. In a November 1, 2016 meeting with NRC, Honeywell indicated that it would file an application in January 2017 for a renewal of its license for 40 years.[62] However, UxC in its December 2016 Market Outlook reports that [REDACTED].[63] It is not clear what capacity Honeywell will seek to relicense. However, with Honeywell's intent to seek a 40-year license renewal, DOE believes that it is likely that even if MTW will not invest in improvements aimed at increasing production capacity, MTW will continue to make capital improvements and refurbishments that are necessary to maintain current capacity for the foreseeable future. As noted earlier, Honeywell has invested a substantial amount in such capital improvements in recent years.

In any case, DOE does not believe that the price effect associated with DOE transfers would make a significant difference in plans for new facilities or other capital improvements at existing facilities. DOE transfers are expected to decrease ConverDyn's sales volume, but even without EM's transfers, ConverDyn's total sales would still be below MTW's previous maximum nameplate capacity. In addition, transfers under the Base Scenario will represent only about 4% of total global requirements in coming years. DOE concludes that eliminating this amount of conversion would not make a difference to the assessment that new capacity in the United States is not warranted.

5. Long-Term Viability and Health of the Industry

ERI's November 2016 Reference Nuclear Power Growth forecasts project global requirements for conversion services to grow to approximately 62 million kgU by 2020, approximately 9% higher than current requirements. Global requirements are expected to continue to rise to a level of 80 million kgU by 2032 to 2035, approximately 40% higher than current requirements. 2017 ERI Report, 14.[64] ERI presents a graph comparing global requirements, demand, and supply from 2016–2035. That graph forecasts that global secondary supply and supply from primary converters will continue to exceed global demand until at least 2035. ERI notes that the supply excess will average nearly 13 million kgU as UF_6 annually over the next ten years (2017–2026), which they note is equivalent to 20% of requirements. 2017 ERI Report, 13. ERI projects that global uranium conversion services requirements will average 58.7 million kgU/year between 2017 and 2019. U.S. requirements are expected to average about 17.2 million kgU in the same timeframe. 2017 ERI Report, 84. Under the Base Scenario, DOE inventory represents 4% of world conversion requirements in 2017–2019 and 3% of world conversion requirements in the 2017 to 2026 timeframe. ERI Report, 42. DOE uranium inventories represented 15% of secondary supply affecting the global conversion market in 2015 and 2016. 2017 ERI Report, 13. If markets that are deemed not to be accessible to U.S. producers are examined, DOE EM transfers under the Base Scenario represent 6% of accessible world conversion requirements in 2017 to 2019 and 4% of world conversion requirements in the ten years 2017 to 2026. 2017 ERI Report, 43.[65]

[58] Cameco and Kazatomprom Sign Agreement to Restructure JV Inkai, (2016), *https://www.cameco.com/media/news/cameco-and-kazatomprom-sign-agreement-to-restructure-jv-inkai* (accessed April 5, 2017).

[59] *Uranium conversion potential for Wyoming, some say, Casper Star Tribune*, Oct. 15, 2016, *http://trib.com/business/energy/uranium-conversion-potential-for-wyoming-some-say/article_b0f1fb8b-4ad6-5dfd-8358-60b1e69cf2ea.html,* (accessed April 5, 2017)

[60] *http://www.honeywell-metropolisworks.com/about-us/,* (accessed April 5, 2017)

[61] *http://www.honeywell-metropolisworks.com/message-from-the-plant-manager/* (accessed April 5, 2017).

[62] Honeywell Presentation, NRC license discussion (Nov. 1, 2016), *https://www.nrc.gov/docs/ML1630/ML16309A092.pdf,* (accessed April 5, 2017).

[63] UxC Conversion Market Outlook, December 2016, page 51.

[64] ERI's reference requirements include anticipated future reactor shutdowns, both in the United States and elsewhere, due to reasons such as competition with natural gas and other energy sources.

[65] ConverDyn suggests that Russian, Chinese, and Indian demand should be excluded because these markets are closed to sales from the domestic conversion industry. DOE notes that even if North American converters lack access to these markets, converters in those countries have access to markets worldwide. ConverDyn does not contest the notion that conversion is essentially a global commodity.

Continued

In its December 2016 Conversion Market Outlook, UxC predicts that demand is generally expected to increase over the next decade. [REDACTED] The above figures include reactor requirements as well as inventory building. Without inventory building, UxC's base demand in 2016 [REDACTED].[66]

Like ERI, UxC predicts that [REDACTED].[67]

Further UxC notes that [REDACTED]. UxC says, [REDACTED].[68] Separately, UxC reports that [REDACTED].[69] In the longer-term, UxC believes that [REDACTED].'' [70]

Given that conversion demand in North America is expected to remain relatively steady, and that UxC predicts [REDACTED], as well as the indication that Honeywell plans to operate for the long-term as indicted by their announced intent to apply for a 40-year license renewal, it is likely that the domestic uranium conversion industry will retain its capacity, either through continuing refurbishments at MTW or through the development of one or more new conversion facilities. As with uranium concentrates, DOE recognizes that the predictability of transfers from its excess uranium inventory over time is important to the long-term viability and health of the uranium conversion industry.

Although DOE transfers may not have a large effect on the conversion term price, displaced production volume increases average production costs for primary producers. However, DOE does not believe this effect is significant enough to appreciably affect the long-term viability and health of the domestic uranium conversion industry.

6. Russian HEU Agreement and Suspension Agreement

Section 3112(d) of the USEC Privatization Act requires DOE to ''take into account'' the sales of uranium under the Russian HEU Agreement and the Suspension Agreement. As discussed above, DOE believes this assessment should consider any transfers under these two agreements that are ongoing at the time of DOE's transfers.

Under the Russian HEU Agreement, upon delivery of LEU derived from Russian HEU, the U.S. Executive Agent, USEC Inc., was to deliver to the Russian Executive Agent, Technabexport (Tenex), an amount of natural uranium hexafluoride equivalent to the natural uranium component of the LEU. DOE notes that the Russian HEU Agreement concluded in December 2013. Thus, there are no ongoing transfers under this agreement.

The current iteration of the Suspension Agreement, described above in Section I.D.3.ii, sets an annual export limit on natural uranium from Russia. 73 FR 7705 (Feb. 11, 2008). That agreement provides for the resumption of sales of natural uranium and SWU beginning in 2011. While the HEU Agreement remained active (*i.e.,* 2011–2013), the annual export limits were relatively small—equivalent to between 170,000 and 410,000 kgU as UF_6. After the end of the Russian HEU Agreement, restrictions range between an amount equivalent to 4,540,000 and 5,140,000 kgU as UF_6 per year between 2014 and 2020. 73 FR 7705, at 7706 (Feb. 11, 2008).

As mentioned above, in September 2016, the U.S. Department of Commerce proposed to adjust the export limits under the agreement to take account of changes in projected reactor demand. The proposed adjusted limits varies by year, but on average, the proposed limits are 6.6% higher than current limits.

Material imported from Russia in accordance with the Suspension Agreement is derived from primary production rather than from down-blended HEU. The 2017 ERI Report takes account of enrichment entering the United States market under the current Suspension Agreement limits as part of total worldwide primary supply. The 2017 ERI Report does not consider the effect of the additional amount that would be allowed into the United States were the Department of Commerce to adopt the adjusted limits as proposed.

DOE believes that it is still appropriate to rely on ERI's analysis without adjusting for the proposed changes to the Suspension Agreement quota limits. It bears emphasis that the volume of the proposed adjustment is small relative to the current limits under the Suspension Agreement, to United States requirements, and worldwide requirements. DOE's analysis already takes into account the amount of conversion services entering the United States from Russia under the current limits, and DOE does not believe that the adjusted limit would significantly alter DOE's analysis even if adopted.

7. Conversion Industry Conclusion

After considering the six factors as discussed above, DOE concludes that transfers under either the Base Scenario or the lower rate of 1,200 MTU per year will not have an adverse material impact on the domestic uranium conversion industry. The sole conversion provider in the United States, ConverDyn, continues to sell nearly exclusively on term contracts. Although the move towards more mid-term contracts has affected the term market, it is not clear that this has affected ConverDyn's realized price under its existing or new term contracts. DOE believes that price suppression of $0.30/kgU in the spot market will not be material for the domestic conversion industry.

DOE forecasts that over time, MTW's production will be smaller than it would have been in the absence of DOE transfers by between 400,000 kgU and 600,000 kgU. DOE conservatively estimates such a reduction would increase MTW's average production costs by about $0.80 between 2017 and 2019. The reduced production may also lead to a decrease in employment, which is estimated to be 9 FTE. DOE does not believe these changes would constitute a material impact, within the meaning of section 3112(d), because they are well within the range of fluctuations that MTW has experienced in recent years independent of DOE transfers.

Honeywell, the owner and operator of MTW, continues to invest in maintaining and refurbishing the MTW facility, has indicated that it will be applying for license renewal for a 40-year term and Even taking account of Honeywell's recent announcement to reduce MTW's capacity, DOE transfers are unlikely to appreciably change MTW's capital improvement and refurbishment plans. Furthermore, DOE transfers are unlikely to affect the decision whether to invest in new conversion capacity in the United States.

DOE does not believe that any of the effects described above constitute an impact on the domestic uranium conversion industry of the substantial importance that would rank as ''material'' within the meaning of section 3112(d).

C. Uranium Enrichment Industry

The domestic uranium enrichment industry consists of a relatively small number of companies. There is only one currently operating enrichment facility in the United States, the URENCO USA (UUSA) gas centrifuge facility in New

Thus, increased demand in Russia, China, and India will consume capacity with which ConverDyn would otherwise compete in markets that it can access.

[66] UxC Conversion Market Outlook, December 2016, 40.

[67] *Id.* at 44.

[68] *Id.* at 68.

[69] *Id.* at 51.

[70] *Id.* at 71.

Mexico. DOE is also aware of additional planned enrichment facilities in Ohio, and North Carolina. The Paducah Gaseous Diffusion Plant closed in 2013. Centrus, formerly USEC Inc., the former operator of the plant, no longer produces enriched uranium but does sell uranium. The uranium sold by Centrus comes from its inventory, SWU purchased from other suppliers, and SWU purchased under a Transitional Supply Contract with TENEX. 2017 ERI Report, 92. The SWU purchased from Russia can be sold in limited quantities in the U.S., with the rest sold to non-U.S. customers. *Id.*

According to URENCO's comments in response to the RFI and NIPC, the current capacity of the UUSA facility is 4.8 million SWU. For comparison, the World Nuclear Association reports that worldwide capacity in 2015 was approximately 59 million SWU and is expected to grow to almost 67 million SWU by 2020, with the vast majority of that growth in Russia and China.[71] UxC reports a base case nameplate capacity of [REDACTED]. UxC projects [REDACTED]. UxC Enrichment Market Outlook, Quarter 1 2017, 46. Some of the capacity additional may be to maintain centrifuge manufacturing capabilities and some of it will be offset by slight capacity reductions in Europe. URENCO is reducing its capacity slightly by not replacing aging centrifuges at its European sites. 2017 ERI Report, 16.

1. Prices for Enrichment Services

Like prices in the uranium concentrates and conversion markets, prices in the enrichment market are described in terms of spot and term price. The following section discusses the potential impact of DOE transfers on these two prices. For reference, as of April 17, 2017, the spot price indicator was $47 per SWU and the term price indicator was [REDACTED] per SWU.[72] DOE obtained information about enrichment services prices from ERI and the UxC Enrichment Market Outlook Report for Quarter 1 of 2017. URENCO also provided information on prices in comments in response to the NIPC. NIPC Comment of URENCO, at 2. URENCO noted price declines since its comments to DOE in September 2016 on the RFI, from a spot price of $55/SWU and term price of $64/SWU to an April 2017 spot price of $47/SWU and term prices of $50/SWU. *Id.*

Like uranium and conversion markets, the enrichment market includes significant sources of secondary supply. The enrichment market is also characterized by excess capacity and very limited near-term demand. Finally, there is not a large gap between spot and term prices for enrichment, as there is for conversion. On the other hand, buyers may be more sensitive to enrichment prices because enrichment constitutes a larger portion of the total cost of enriched uranium product.[73]

To be conservative, DOE will assume that a competitive price-setting mechanism does determine enrichment prices. On that assumption, ERI's market-clearing price methodology should provide an appropriate forecast for the effects of DOE's transfers. To the extent that enrichment prices are uncompetitive, the price effect will tend to be smaller than what ERI forecasts.

i. Energy Resources International Report

In the 2017 ERI Report, like the 2015 ERI Report, ERI estimated the effect of DOE transfers on the market prices for enrichment services using a market clearing price methodology. Like uranium concentrates and conversion, ERI conducted the clearing prices analysis on both an annual and cumulative basis, constructing individual supply and demand curves for enrichment services and estimating the clearing price with and without DOE transfers. ERI Report, 44. The same DOE transfer scenarios described in Section IV.A.1 were used in the analysis.

Unlike the uranium concentrates and conversion prices, however, there is no difference in ERI's estimated price effect between any of the four scenarios because EM transfers of natural uranium do not include an enrichment component. Instead, the price effects indicated in the analyses are attributable to the planned NNSA transfers of LEU for national security purposes and past transfers of LEU that continue to displace supply in the market. The price effects are presented here and included as part of DOE's consideration and analysis of whether or at what level to conduct EM uranium transfers. Because there is no difference in price effects between the scenarios, there is no marginal or incremental price effects to be considered.

Using the market clearing price model, on an annual and cumulative basis, ERI estimates the market clearing price with and without DOE inventory and the difference is the effect that DOE transfers will have on the market clearing price for the enrichment services industry listed in Tables 12 and 13, respectively. The ''No DOE Transfers'' market clearing methodology models the market as though no transfers have taken place since 2009, so the price effects attributed to DOE inventory are already built into the current market prices. If no DOE inventory release had taken place, then future market prices would be higher by the amounts stated. 2017 ERI Report, 54.

TABLE 12—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON ENRICHMENT PRICES IN $ PER SWU

[Annual market clearing approach]

	ERI—all scenarios
2017	$1.40
2018	1.80
2019	1.70
2020	0.10
2021	1.70
2022	1.70
2023	0.10
2024	0.10
2025	
2026	
Average (2017–2026)	0.90

TABLE 13—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON ENRICHMENT PRICES IN $ PER SWU

[Cumulative market clearing approach]

	ERI—all scenarios
2017	$9.70
2018	8.80
2019	7.30
2020	8.80
2021	14.90
2022	10.50
2023	10.10
2024	2.60
2025	7.50
2026	1.30
Average (2017–2026)	8.20

As noted above, ERI also presented information on the cumulative clearing price effect relative to ''No DOE'' clearing price for enrichment services, where the ''No DOE'' clearing price assumes that DOE releases from 2009 onward were zero. 2017 ERI Report, 58. Table 14 presents the price effect as a percentage of ''No DOE'' clearing price from Table 4.9 in the 2017 ERI Report, which provides an assessment of price

[71] World Nuclear Fuel Report 2015, available at *http://www.world-nuclear.org/information-library/nuclear-fuel-cycle/conversion-enrichment-and-fabrication/uranium-enrichment.aspx* (accessed April 6, 2017). DOE believes that the Chinese capacity is being built for indigenous needs and that Russia's enrichment plans have slowed down since the WNA numbers were compiled.

[72] UxC, Ux Weekly, April 17, 2017 (Volume, 31, Number 16) at 1.

[73] DOE believes the magnitude of any effect of DOE transfers on the uranium or enrichment price that is transmitted through the interaction with the enrichment or uranium price, respectively, is small.

impacts for the period 2017 to 2026 as an estimated percent change in enrichment clearing price attributable to the DOE inventories under the four scenarios relative to the ''No DOE'' market prices. As with Tables 12 and 13, there is no difference in the percentage of the price effect among the four scenarios, and therefore a calculation of the marginal or incremental effect is not conducted.

TABLE 14—CUMULATIVE ENRICHMENT PRICE EFFECTS AS PERCENTAGE OF ''NO DOE'' CLEARING PRICE

	ERI—all scenarios (percent)
2017	12
2018	11
2019	9
2020	10
2021	16
2022	11
2023	11
2024	3
2025	8
2026	1
Average (2017–2026)	9

DOE also notes that ERI's analysis assumes demand for enrichment to be perfectly inelastic. This assumption is a reasonable approximation because nuclear utilities have predictable requirements that must be filled. In reality, demand may have some small degree of elasticity and, as such, the price effect would be smaller than what ERI forecasts.

ii. Effect of DOE Transfers on Market Prices

Based on the foregoing discussion of market analyses and DOE's consideration of the information, DOE concludes that the level of EM transfers will not have a direct effect on the market price for enrichment. ERI's market clearing price analysis shows no difference in price between the scenario with no EM transfers and the scenarios with different levels of EM transfers. Separate and apart from the EM transfers that are the subject of this determination, DOE's transfers for NNSA down-blending and historical transactions involving LEU that continue to displace market supply will affect the SWU price because they contain an enrichment component. ERI estimates that DOE transfers of LEU will suppress the market price of enrichment on average in the next decade either $.90 or $8.20 per SWU, based on the annual and cumulative clearing price approach, respectively. We note that the average near-term effect using both methodologies is somewhat larger, $1.63 (annual) or $8.60 (cumulative) per SWU. This is understandable, since the near-term includes the NNSA transfers for LEU down-blending that will cease by 2019. The price effect significantly diminishes toward the end of the decade, when past transactions in addition the NNSA LEU down-blend transfers are no longer entering the market.

As in the uranium concentrates and conversion industries, the significance of price suppression at this level depends, in part, on current and forecasted market prices. As stated above, the April 17, 2017 spot price indicator was $47 per SWU and the term price indicator was [REDACTED] per SWU. UxC Weekly, Volume 31, Number 16 at 1. Using the annual method forecast, the price effect in the next decade reasonably attributable to DOE transfers represents about 2% of these current market values; the price effect in the near-term is about 3.5%. According to UxC's Quarter 1 Enrichment Market Outlook, 112, spot prices for SWU dropped [REDACTED]. Similarly, term price fell from $[REDACTED] by year's end. These represent declines of 22% and [REDACTED]%, respectively. Compared to these large overall price swings, price effects of 2–3.5% are well within the normal range of market fluctuations. Even under the cumulative method, with an average decline over the decade of $8.20/SWU would yield a price decline of 17%, still within the range of recent market fluctuations.

To reiterate, while DOE has considered here the projected price effect of the NNSA and other LEU transfers under all scenarios, the effect of only the EM transfers is the question this analysis must address. As noted earlier, EM transfers would have a small price effect on both the uranium and conversion markets. There is the possibility that DOE transfers of natural uranium could still have an effect on SWU prices indirectly due to the prevalence of ''underfeeding'' or re-enrichment of tails. The amount of enrichment devoted to underfeeding at any given time depends in part on the relative prices of natural uranium hexafluoride and enrichment. Because EM transfers suppress the price of natural uranium without directly affecting the enrichment market, they tend to indirectly suppress the SWU price as well due to this interaction. Although ERI does not attempt to quantify this indirect effect on the SWU price, DOE notes that in the 2015 Secretarial Determination and Analysis, DOE estimated that transfers at levels equivalent to the Base Scenario would cause enrichers to devote less primary supply to underfeeding by about 200,000 SWU. Based on available information, DOE cannot attribute a specific price effect to this interplay, but given the size of the effect compared to URENCO's nameplate capacity—4.8 million SWU at UUSA and between 13–15 million SWU in the EU—DOE believes that this effect is small enough not to affect the conclusion that continuing the EM transfers of natural uranium at either the Base Scenario rate or the 1,200 MTU per year rate beginning in May 2017 would not have an adverse material impact on the U.S. enrichment industry.

iii. Effect on Realized Prices

As with uranium concentrates and conversion, the principal mechanism through which a change in market price would impact the domestic uranium enrichment industry is through the effect on what prices an enricher actually receives for its services. The market price indicators published by TradeTech and UxC are based on market information about recent offers, bids, and transactions, and are thus a snapshot of contracting activity at the time of the publication. Enrichment, like uranium concentrates and conversion, is primarily sold on long-term contracts. In 2015, of the total 54.5 million pounds U_3O_8 equivalent purchased by owners and operators of U.S. civilian nuclear power reactors, 78% was sold on long-term contracts. The price paid for enriched UF_6 under the long-term contracts versus spot contracts was $43.28 and $33.37, respectively. EIA Uranium Marketing Annual Report, 26 (2016). Consequently an enricher's actual revenues are somewhat insulated from short-run fluctuations in price.

URENCO's Full-Year Audited Financial Results for 2016, which was submitted to the Department as part of URENCO's NIPC comments, reports a contract backlog that with a value of €15.5 billion that extends into the latter half of the next decade. URENCO states that it will experience lower profit margins and reduced cash flow if pricing pressures persist in the middle and long-term. Specifically, URENCO states it will feel the impact of lower SWU prices ''primarily from the second half of the next decade, as until such time the majority of our revenues are at contracted prices.'' NIPC Comment of URENCO, Enclosure 1, at 1. [REDACTED]. UxC Enrichment Market Outlook, Quarter 1 2017, 21. Based on this information, DOE concludes that URENCO is currently producing SWU to

fulfill its existing contracts, but it is unlikely to enter into new term contracts for significant volumes in the near future. Therefore, it does not appear that the SWU price suppression attributable to DOE transfers will have an appreciable effect on URENCO's realized price in the near-term.

EM transfers are expected to have an effect on the uranium concentrate and conversion prices, as described in Sections IV.A.1 and IV.B.1. URENCO notes that a portion of UUSA's capacity is dedicated to underfeeding and re-enrichment of depleted tails but does not provide data regarding its sales in these markets. ERI notes that URENCO estimated in 2013 that it uses 10–15% of its capacity for underfeeding or re-enrichment of tails. 2017 ERI Report, 93. To the extent that URENCO sells the natural uranium that is the result of its underfeeding and re-enrichment on the spot market, it will receive a realized price that is lower by the level of the price suppression described above—on average over the next decade, $1.40 per pound U_3O_8 for uranium concentrates and $0.30 per kgU for conversion services. Based on available information, DOE is unable to determine the specific volume of natural uranium that URENCO sells on the spot market, but DOE reiterates its conclusions from the sections above that the price effects are within the range of those exhibited by normal market fluctuations.

2. Production at Existing Facilities

As discussed above, the only existing U.S. enrichment facility is the UUSA gas centrifuge facility in New Mexico. URENCO reports a current capacity of 4.8 million SWU and notes that the regulatory approvals are in place to expand capacity.[74] ERI reported that UUSA capacity is projected to increase to 5.7 million SWU by 2022, which we understand to be the completion of UUSA's Phase 3. 2017 ERI Report, 16. [REDACTED]. UxC Enrichment Market Outlook, 54. As noted earlier, the capacity expansion will serve to support an ongoing centrifuge manufacturing capability. URENCO's NIPC comments at 3 note that URENCO has cancelled Phase 4 of its construction plans at its plant in New Mexico, which would have added 2 million SWU capacity, because of market conditions. ERI also reports that, in 2016, URENCO reduced its production capacity at the Capenhurst site when it mothballed two production halls (out of 15). URENCO has also made small capacity reductions by not replacing aging centrifuges at its European sites when centrifuges go out of service. 2017 ERI Report, 16.

ERI's November 2016 Reference forecast for enrichment services requirements projects that annual world requirements for enrichment services in 2016 are 45.4 million SWU, but are then projected to increase to 49 million SWU in 2017. 2017 ERI Report, 14. U.S. requirements are projected to be essentially flat, averaging almost 15 million SWU per year between 2016 and 2035. The updated projections for average U.S. requirements for uranium and conversion services are lower than those used in the February 2015 ERI market analysis, although enrichment requirements have increased somewhat due to lower tails assay assumption. Projected U.S. uranium and conversion requirements have declined by 2% while U.S. enrichment requirements increased by 4%.

URENCO's internal estimates suggest that global SWU inventories represent nearly two-year's worth of 2016 global SWU requirements. RFI Comment of URENCO, at 3. URENCO also notes very limited uncommitted demand in the next few years and notes that DOE inventories compete for these very limited pools of demand. Further, URENCO opines that the combination of low demand and excess supply is placing downward pressure on prices for uranium enrichment services, pointing out that prices have fallen considerably from the $79/90 spot/term prices at the time of the May 2015 Secretarial Determination. URENCO's 2016 Annual Results state that ''URENCO anticipates continued short to medium term pricing pressures until worldwide fuel inventories are reduced which may impact future profit margins.'' The 2016 Annual Results also note that the company is confident that global nuclear industry will continue to grow.[75] Finally, these financial results note that URENCO is benefitting by the strength of the U.S. dollar in that two-thirds of its revenue is in U.S. dollars. The projections for increasing requirements for U.S. enrichment are expected to generate increased production at the UUSA facility.

DOE does not believe that its uranium transfers will not have a significant effect on production at the only existing U.S. uranium enrichment facility.

3. Employment Levels in the Industry

ERI does not provide an estimate of the change in employment due to DOE transfers in the enrichment industry. However, URENCO shared in its NIPC comments that it expects to reduce our 2016 workforce of 280 by 50 employees ''in the near-term.'' URENCO NIPC comment at 3. URENCO does not state what proportion of this employee reduction it believes is attributable to DOE transfers. DOE is not able to independently assess what, if any, portion of this 18% workforce reduction is attributable to DOE transfers, but believes it is reasonable to conclude that the DOE transfers do not contribute in significant part given other market conditions and factors.

4. Changes in Capital Improvement Plans and Development of Future Facilities

As noted above, ERI reports that URENCO USA capacity increased to 4.6 million SWU by the end of 2015, with plans to slowly increase to 5.7 million SWU by 2022. 2017 ERI Report, 25. Another planned enrichment facility was announced by Global Laser Enrichment, a venture of GE-Hitachi and Cameco. The proposed facility will use laser enrichment technology developed by Silex Systems to enrich depleted uranium tails to the level of natural uranium, at a proposed location near Paducah, KY.[76]

The U.S. Nuclear Regulatory Commission granted two additional licenses for centrifuge enrichment plants. Centrus holds a license for the American Centrifuge Plant in Piketon, Ohio, while AREVA Enrichment Services holds a license for the Eagle Rock Enrichment Facility, planned for Bonneville County, Idaho. However, on March 10, 2017, AREVA informed the NRC that it does not plan to construct the Eagle Rock Enrichment Facility and asked that its license be terminated. The American Centrifuge Plant is not currently being developed; Centrus' Web site indicated that the company ''is continuing to explore technology refinements and other ways to deploy the most cost effective commercial enrichment capacity taking advantage of the current period of time when capacity expansion is not needed in the market.''[77] NRC also issued a license to GE-Hitachi for a laser enrichment facility in Wilmington, North Carolina. Development of that facility is also on-hold and GE-Hitachi has announced its

[74] URENCO, 2015 Annual Results Presentation, *http://www.urenco.com/_/uploads/results-and-presentations/160301_URENCO_end_of_year_results_presentation_FINAL.pdf* (Accessed February 7, 2017).

[75] *Id.*

[76] Energy Department Announces Agreement to Sell Depleted Uranium to be Enriched for Civil Nuclear Power, (Nov. 11, 2016), *https://energy.gov/pppo/articles/energy-department-announces-agreement-sell-depleted-uranium-be-enriched-civil-nuclear* (accessed February 22, 2017).

[77] *CentrusEnergy.com, http://www.centrusenergy.com/what-we-do/national-security/american-centrifuge/* (accessed April 14, 2017).

plans to sell its shares and exit that venture.

As outlined above, planning for improvements or development of future enrichment facilities has slowed significantly due to market conditions. As previously noted, URENCO is currently working on Phase 3 of its New Mexico plant, which is expected to bring capacity to 5.7 million SWU but has cancelled the previously planned 2 million SWU Phase 4.

5. Long-Term Viability and Health of the Industry

URENCO indicates that pressures on pricing and on competition for limited demand ''present significant challenges for the United States' only enrichment plant.'' The comments also indicate that some of UUSA's capacity is being directed towards underfeeding and for re-enrichment of its depleted tails so that URENCO is therefore affected by market pressures in the uranium and conversion markets. NIPC Comment of URENCO at 3.

With total world enrichment supply currently projected to exceed requirements for enrichment services by a significant margin over the long term, it is expected that enrichers will continue to redirect excess enrichment capacity to underfeeding and re-enrichment of tails. The uranium market will continue to be of interest to enrichers as unfilled requirements in the uranium market increase in the future. Note, however, that this does put additional pressure on uranium producers. Unfilled requirements in the enrichment market are also projected to increase in the future. The sole U.S. enricher is currently benefitting from a strong U.S. dollar exchange rate. URENCO indicated that these pricing pressures have ''a direct impact'' on UUSA and pointed to a non-cash impairment charge against its UUSA operation of more than $800 million (€ 760 million) on its Full-Year 2016 Audited Financial Statement. URENCO's Full-year 2016 Audited Financial Statement takes note of the pricing pressures facing the parent company and the enrichment market, but note that 'we believe that the combination of our current robust finances coupled with our new strategic direction will enable us to remain a reliable and sustainable partner in the global nuclear industry. . . .''

As noted in Section IV.A. 5 above, nuclear power requirements are expected to grow in the future. Increases in demand will minimize the need for enrichers to underfeed and/or re-enrich tails, which will also take pressure off the uranium and conversion markets. To the extent that enrichers have significant backlog of long-term contracts, some of which were likely signed prior to the 2011 Fukushima Daiichi accident that significantly changed market dynamics, the impact of DOE uranium transfers on the U.S. enrichment industry's will not have an adverse material impact on the long-term viability and health of that industry.

6. Russian HEU Agreement and Suspension Agreement

Section 3112(d) of the USEC Privatization Act requires DOE to ''take into account'' the sales of uranium under the Russian HEU Agreement and the Suspension Agreement. As discussed above, DOE believes this assessment should consider any transfers under these two agreements that are ongoing at the time of DOE's transfers.

Under the Russian HEU Agreement, Russian HEU was down-blended to LEU and then delivered to USEC Inc. for sale to end users in the United States. DOE notes that the Russian HEU Agreement concluded in December 2013. Thus, there are no ongoing transfers under this agreement.

The current iteration of the Suspension Agreement, described above in Section I.D.3.ii, sets an annual export limit on natural uranium from Russia. 73 FR 7705 (Feb. 11, 2008). That agreement provides for the resumption of sales of natural uranium and SWU beginning in 2011. While the HEU Agreement remained active (*i.e.,* 2011–2013), the annual export limits were relatively small—equivalent to between 100,000 and 250,000 SWU. After the end of the Russian HEU Agreement, restrictions range between an amount equivalent to 2,750,000 and 3,110,000 SWU per year between 2014 and 2020. 73 FR 7705, at 7706 (Feb. 11, 2008).

As mentioned above, in September 2016, the Department of Commerce proposed to adjust the export limits under the agreement to take account of changes in projected reactor demand. The proposed adjusted limits would allow an additional 990,000 SWU from Russia into the United States between 2016 and 2020. The additional amount varies by year, but on average, the proposed limits are 6.6% higher than current limits.

Material imported from Russia in accordance with the Suspension Agreement is derived from primary production rather than from down-blended HEU. The 2017 ERI Report takes account of enrichment entering the United States market under the current Suspension Agreement limits as part of total worldwide primary supply. The 2017 ERI Report does not consider the effect of the additional amount that would be allowed into the United States were the Department of Commerce to adopt the adjusted limits as proposed.

DOE believes that it is still appropriate to rely on ERI's analysis without adjusting for the proposed changes to the Suspension Agreement quota limits. It bears emphasis that the volume of the proposed adjustment is small relative to the current limits under the Suspension Agreement, to United States requirements, and worldwide requirements. Nominally, the adjustment adds no more than 410,000 SWU in any given year—and as low as 70,000 SWU in 2017 and 2019. DOE's analysis already takes into account the amount of SWU entering the United States from Russia under the current limits, and DOE does not believe that the adjusted limit would significantly alter DOE's analysis even if adopted.

7. Enrichment Industry Conclusion

In this analysis, DOE has considered the above six factors and the effect of all DOE transfers on the U.S. enrichment industry, including the NNSA transfers which are not the subject of this determination. DOE is cognizant of the challenges in the enrichment market.

The NNSA LEU transfers for down-blending are the only forward looking transfers that would have a direct impact on the U.S. enrichment industry and are not the subject of this Determination. EM transfers have no direct effect on enrichment prices, but even if they did, URENCO currently realizes prices under its existing contract book of long-term contracts and is not expected to enter into an appreciable volume of new long-term contracts in the near future without a very significant increase in SWU prices. Thus, even if EM transfers did directly affect the enrichment prices and price suppression from DOE LEU transfers were included, there would not be any appreciable effect on URENCO's current realized price for enrichment services, employment at UUSA, or plans for capital improvement or expansion. Similarly, other potential entrants into the domestic enrichment market would require prices so much higher than current prices that DOE transfers, even including LEU, would not affect investment decisions with respect to new plants.

That said, due to the enrichment industry practice of underfeeding and re-enriching tails, DOE concludes that the EM transfers of natural uranium will have a small impact on the U.S. enrichment industry due to the price

suppression in the uranium and conversion markets attributable to the transfers described above. Given that URENCO is primarily in the business of providing enrichment services, that it devotes 85% of more of UUSA's capacity to primary enrichment, and the fact that the price suppression on the spot prices for uranium concentrates and conversion is relatively small—$1.40 per pound U_3O_8 for uranium concentrates and $0.30 per kgU for conversion—the effect on URENCO would be relatively small and not one of real import or great consequence such that it would constitute an adverse material impact on the domestic enrichment industry.

V. Other Comments

A number of commenters throughout the public participation process have expressed views on matters that were not specifically within the scope of this Determination, or may be related to the topic of DOE's uranium transfers but not specifically its Determination of adverse material impact.

Some commenters commended DOE for undergoing an open and public process on this Determination, *e.g.,* NIPC Comment of Duke Energy, at 1, while others commented that greater transparency in DOE uranium management and planning was important to promote predictability and stability in the nuclear fuel market. NIPC Comment of NEI, at 2. Some commenters supported DOE's transfers as a means to support continued cleanup at the Portsmouth site, FBP Comment, and others commented that funding for such activities should be obtained from Congress through appropriations. *See* NIPC Comment of Duke Energy, at 1, NIPC Comment of NEI, at 3. Comments ranged from requesting DOE halt all uranium transfers, NIPC Comment of UPA, at 2, 17, to, in the alternative, limiting DOE transfers to the least harmful of the three options, Scenario 2. NIPC Comment of ConverDyn, at 2.

Certain comments from the public were out of scope of this Determination.

Several members of the public requested that DOE transfer all surplus uranium to American reactors and cease exporting any uranium to foreign countries. NIPC Comment of Anne Marie Zeller at 1; NIPC Comment of Dawna Papenhausen, at 1. Other commenters' statements regarding the amount of uranium imported to power domestic nuclear reactors is illustrative only as to the international nature of the uranium markets. See, *e.g.,* NIPC Comment of enCore Energy, at 1. U.S. origin uranium is not required for U.S. reactors to meet demand and, as demonstrated in this Analysis, much of the uranium used in domestic reactors is obtained from foreign suppliers.

Comments related to proposed legislation also are outside the scope of this Determination. NIPC Comment of UR-Energy, at 2. The Administration has not taken a formal position on proposed legislation related to uranium management. In addition, UPA's comment as to the fair market value received for DOE transfers is outside the scope of this Determination, which addresses only the requirements of section 3112(d)(2)(B) regarding market impacts. NIPC Comment of UPA, at 16–17. DOE evaluates whether it receives fair market value prior to each transfer through a separate process. Lastly, UPA's call for DOE to withdraw the December 2016 national security determination is outside the scope of this Secretarial Determination and Analysis, which only considers future EM transfers. NIPC Comment of UPA, at 2.

Commenters also requested DOE consider foregoing the down-blend of highly enriched uranium to 5% enrichment or below in anticipation of demand for high-assay LEU not available currently in the market for use in advanced nuclear reactors and advanced nuclear fuel development. NIPC NEI Comment, at 2. In consideration of these comments, and notwithstanding policies suggested in proposed legislation, DOE is considering plans to issue a Federal excess uranium inventory management plan to provide additional information on DOE's uranium management planning and thereby increase transparency and reliability upon which the uranium industries can make investments and decisions.

VI. Conclusion

For the reasons discussed above, DOE concludes that transfers under either the 1,600 MTU or 1,200 MTU scenarios will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industries, taking into account the Russian HEU Agreement and Suspension Agreement.

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Proposed Rule Change Related to Auctions in IEX-Listed Securities, Dissemination of Auction-Related Market Data, and Provisions Governing Trading Halts and Pauses; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80583; File No. SR–IEX–2017–10]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Proposed Rule Change Related to Auctions in IEX-Listed Securities, Dissemination of Auction-Related Market Data, and Provisions Governing Trading Halts and Pauses

May 3, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 20, 2017, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''), and Rule 19b–4 thereunder, Investors Exchange LLC (''IEX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to adopt rules governing auctions conducted on the Exchange, including dissemination of auction-related market data, for securities listed on the Exchange pursuant to Chapter 14 of the IEX Rule Book. In addition, IEX proposes to amend IEX Rule 11.280 to add provisions governing trading halts and trading pauses pursuant to the Limit Up-Limit Down Plan (''LULD'' or the ''LULD Plan'') in IEX-listed securities. The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend IEX Rule 11.350 (which is currently reserved) and IEX Rule 11.330 to adopt rules to govern auctions conducted on the Exchange, including dissemination of auction-related market data, for securities listed on the Exchange pursuant to Chapter 14 of the IEX Rule Book (''IEX Auctions''). Furthermore, the Exchange is proposing to amend Rule 11.190(a)(2)(E) to allow market orders with a time-in-force of DAY to be entered in the Pre-Market Session for queuing and participation in the Opening Auction (or Halt Auction, as applicable). The Exchange is also proposing certain amendments to IEX Rule 11.280 to provide the Exchange with the authority to declare an LULD trading pause as well as define other circumstances in which the Exchange has the authority to initiate trading halts.

The proposed rule change includes rule provisions to govern (i) the Opening, Closing, initial public offering (''IPO''),[4] Halt, and Volatility Auctions for IEX-listed securities; (ii) auction-related order types and modifiers; and (iii) auction-related market data. Each of the auctions will enable IEX Users to participate in electronic price discovery mechanisms that match orders in each IEX-listed security at a single price (*i.e.,* the clearing price) using a double auction process. The IEX Auction process is designed to efficiently maximize the number of shares executed at a single price during the auctions, as described more fully below. As proposed, the auctions would be available at the open and close of the Regular Market Session, for the start of trading for an IPO or launch of a new issue, and upon the resumption of trading in a security following a trading halt or a trading pause pursuant to the LULD Plan.[5] In addition, during the auction process, IEX will calculate and disseminate IEX Auction Information via the IEX Top of Book Quote and Last Sale feed (''TOPS''), the IEX Depth of Book and Last Sale feed (''DEEP''), as well as the IEX Data Platform, which is available free of charge on the Exchange's public Web site, for all auctions as more fully described below.[6]

IEX Auctions were designed based on extensive review of the auction designs of the New York Stock Exchange (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), Nasdaq Stock Market (''Nasdaq''), Bats BZX Exchange (''Bats''), and the London Stock Exchange (''LSE'') as well as discussions with a variety of buy-side and sell-side market participants, including large banks and broker dealers, electronic market makers, asset managers, and institutional investors. As described below, IEX Auctions have adopted several auction attributes that are substantially similar to existing exchange auction models, and will therefore be familiar to Members participating in IEX Auctions for securities listed on the Exchange. The Exchange believes that the proposed auction designs will provide a transparent, efficient, and robust process to aggregate trading interest submitted by a broad range of market participants to be matched at a single clearing price, consistent with the protection of investors and the public interest, and aligns with issuers' interests.

During the auction design process, the primary goal of the Exchange was to maximize participation in the auction, in order to provide an efficient price discovery process and greater opportunity for execution at the official auction price.[7] The Exchange's goals were developed after extensive informal discussions with a broad range of market participants and market research, and thus the Exchange's goals are inherently in alignment with the interests of investors and issuers. As discussed by Noam Nisan in his research on mechanism design, ''generally speaking, the more buyers and sellers there are in a market, the more the situation becomes close to the perfect market scenario.'' [8] In an effort to garner broad participation, IEX has kept

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The term IPO refers to the initial public offering of securities registered under Section 6 of the Securities Act of 1933.

[5] *See* Rule 11.280(e)(1)(A) and Supplementary Material .01(c) to Rule 14.207.

[6] Capitalized terms have the meaning set forth in relevant IEX rules or proposed rules, as described herein.

[7] *See* Trading the Auctions, Richard Johnson, 2017 (*https://www.greenwich.com/equities/trading-auctions*).

[8] *See* Algorithmic Game Theory, Noam Nisan, Tim Roughgarden, Eva Tardos, Vijay V. Vazirani, 2007 at 209 (*http://www.cs.cmu.edu/~sandholm/cs15-892F13/algorithmic-game-theory.pdf*).

the fixed costs for trading on the Exchange lower than any U.S. primary listing exchange, since the Exchange does not charge for market data, connectivity, or membership.[9] Additionally, the Exchange chose to limit the number of new order types that would be eligible for IEX Auctions, thus simplifying the tools at the disposal of Users to express interest in an IEX Auction. Moreover, the Exchange chose to limit the restrictions on expressing interest in the Opening and Closing Auction, akin to the model employed by the LSE and other European exchanges during the call period.[10]

Research has shown that a truthful expression of each participant's limit provides the optimal mechanism for price discovery.[11] Therefore, to promote price discovery in the Opening and Closing Auctions, the Exchange chose to depart from the European model by designing IEX auctions in a manner where Users cannot adjust (*i.e.,* cancel or modify) auction-specific interest once entered. The Exchange is balancing the objective of allowing Users to express their true limit on auction-specific interest leading into Opening and Closing Auctions (with restrictions on price aggressiveness as the auction nears) with conducting Opening and Closing Auctions in a timely manner at 9:30 a.m. and 4:00 p.m., respectively. Alternatively, when conducting a Halt, IPO, and Volatility Auction, such auctions are designed to extend the price discovery process in order to establish equilibrium rather than restricting the ability to enter or adjust auction-specific interest. Finally, to maximize participation and enhance price discovery, the Exchange designed the Opening and Closing Auctions in a manner where the interest from continuous trading (itself a continuous double auction) will be effectively merged using the Exchange's standard priority mechanisms, with the interest accumulating for the periodic double auction at the start or end of the Regular Market Session. This coalescence of interest at 9:30 a.m. and 4:00 p.m. is facilitated by frequent disseminations of auction related data, including indicative prices, which allow participants to enter new auction-specific interest or adjust continuous trading behavior as participants iterate towards the clearing price (*i.e.,* a price-adjustment mechanism).[12] Specifically, for all IEX Auctions, to facilitate the iterative process that arrives at a clearing price that maximizes shares at a single price, the Exchange provides a price signal (*i.e.,* the indicative clearing price) via disseminations of auction related data, and Users submit their interest to the Exchange. Upon receipt of new auction interest, the Exchange recalculates prices utilizing the aggregate supply and demand and disseminates new auction prices each second. In each dissemination, Users are able to recalculate their demand upon receiving the newly adjusted pricing information from the Exchange and submit their new interest to the Exchange. This price discovery process continues until prices converge to an equilibrium (in the case of a Halt, IPO, or Volatility Auction), or the auction match occurs (in the case of the Opening or Closing Auctions).

IEX Auctions were strategically designed after extensive research and informal discussion with various market participants to provide unique value to fundamental investors, and the issuers that make up the subject of their investments. As with all products and functionality offered by the Exchange, research, quantitative analysis, and input from Members and the issuer community will inform future iterations of IEX Auctions, as we strive to deliver quality trading experiences for IEX Members and issuers.

Overview

The Exchange proposes adoption of definitions to govern IEX Auctions in paragraph (a) of IEX Rule 11.350. Proposed paragraph (b) sets forth IEX Auction priority rules, describing how orders shall be ranked in the Opening, Closing, IPO, Halt, and Volatility Auctions. Proposed paragraph (c) sets forth the process for conducting an opening auction on the Exchange (''Opening Auction''), determining an official opening price for dissemination to the consolidated tape (''IEX Official Opening Price''), and contingency procedures that shall apply when a disruption occurs that prevents the execution of the Opening Auction. Proposed paragraph (d) describes the process for conducting a closing auction on the Exchange (''Closing Auction''), determining an official closing price for dissemination to the consolidated tape (''IEX Official Closing Price''), and primary and secondary contingency procedures that shall apply when a disruption occurs that prevents the execution of the Closing Auction. Proposed paragraph (e) describes the Exchange's process for conducting an auction in the event of an IPO or launch of a new issue, or following a trading halt (''IPO Auction'' or ''Halt Auction'', respectively), determining the opening price for dissemination to the consolidated tape in the case of an IPO Auction (''IEX Official IPO Opening Price'') or the re-opening trade following a trading halt (''IEX Re-opening Trade'' or IEX Official Opening Price if the security has not traded during the Regular Market Session on that trading day), and contingency procedures that shall apply when a disruption occurs that prevents the execution of the IPO or Halt Auction. Proposed paragraph (f) describes the Exchange's process for conducting an auction following an LULD trading pause (''Volatility Auction''), determination of the IEX Re-opening Trade, or the IEX Official Closing Price when closing with a Volatility Auction, and contingency procedures that shall apply when a disruption occurs that prevents the execution of the Volatility Auction. Proposed paragraph (g) describes the priority and handling of short sale orders not marked short exempt for covered securities when the Short Sale Price Test of Rule 201 of Regulation SHO is in effect. Proposed paragraph (h) grants the Exchange discretion to adjust the timing of or suspend IEX Auctions when, in the judgment of the Exchange, the interests of fair and orderly markets so require. Proposed paragraph (i) designates the resultant executions from IEX Auctions as single priced opening, re-opening, and closing transactions that meet the requirements of Rule 611(b)(3) of Regulation NMS and section VI(D)(6) of the plan to Implement a Tick Size Pilot Program, and may therefore trade-through or trade-at the price of any other Trading Center's protected or manual quotations. Additionally, proposed paragraph (j) makes clear that all references to a.m. and p.m. shall mean Eastern Time. The Exchange also proposes certain modifications and amendments to IEX Rule 11.330 regarding Data Products to include IEX Auction Information in certain of the Exchange's data products, as described more fully below. Furthermore, proposed Rule 11.190(a)(2)(E) allows market orders with a time-in-force of DAY to be entered in the Pre-Market

[9] *See* IEX Fee Filing (*https://iextrading.com/docs/rule-filings/SR-IEX-2016-09.pdf*).

[10] *See* LSE Guide to New Trading System, Section 7.2 at 67 (*http://www.londonstockexchange.com/products-and-services/trading-services/guide-to-new-trading-system.pdf*). *See* also NASDAQ OMX Nordic Market Model 2.2, Section 4.2.3 at 16(105) (*http://www.nasdaqomx.com/digitalAssets/73/73614_nasdaq_omx_nordic_market_model_2.2_1_april_2011.pdf*).

[11] See Algorithmic Game Theory, Noam Nisan, Tim Roughgarden, Eva Tardos, Vijay V. Vazirani, 2007 (*http://www.cs.cmu.edu/~sandholm/cs15-892F13/algorithmic-game-theory.pdf*).

[12] Walras. Elements of Pure Economics, or the Theory of Social Wealth. Richard Irwin, 1954. (Original version published in French in 1874).

Session for queuing and participation in the Opening Auction (or Halt Auction, as applicable). The Exchange is also proposing to make a conforming change to Rule 11.190(a)(1)(E)(iii) and (v) to explicitly identify that limit orders with a time-in-force of DAY or GTX for IEX-listed securities that are entered in the Pre-Market Session are queued for participation in the Opening Auction (or Halt Auction, as applicable). Lastly, the Exchange proposes certain modifications and amendments to IEX Rule 11.280 to provide the Exchange with the authority to declare an LULD trading pause as well as define other circumstances in which the Exchange has the authority to initiate trading halts, and the procedures regarding the initiation and termination of such trading halts.[13]

Auction Specific Order Types

The Exchange proposes to offer the following new order types in connection with IEX Auctions:

• A ''Market-On-Open'' or ''MOO'' order is a market order that specifically requests execution at the IEX Official Opening Price (or the IEX Official IPO Opening Price in the case of an IPO Auction) and is designated for execution in the Opening Auction, IPO Auction, or Halt Auction when queued prior to Regular Market Hours if a Pre-Market Session halt persists through the start of Regular Market Hours. A MOO order submitted as a pegged order will be rejected. A MOO order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported;[14]

• A ''Limit-On-Open'' or ''LOO'' order is a limit order that specifically requests execution at the IEX Official Opening Price (or the IEX Official IPO Opening Price in the case of an IPO Auction) and is designated for execution in the Opening Auction, IPO Auction, or Halt Auction when queued prior to Regular Market Hours if a Pre-Market Session halt persists through the start of Regular Market Hours. An LOO order submitted as a pegged order will be rejected. An LOO order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported;[15]

• A ''Market-On-Close'' or ''MOC'' order is a market order that specifically requests execution at the IEX Official Closing price and is designated for execution in the Closing Auction, or in a Volatility Auction when such auction is determining the IEX Official Closing Price pursuant to Rule 11.350(f)(3). A MOC order submitted as a pegged order will be rejected. A MOC order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported;[16] and

• A ''Limit-On-Close'' or ''LOC'' order is a limit order that specifically requests execution at the IEX Official Closing Price and is designated for execution in the Closing Auction, or in a Volatility Auction when such auction is determining the IEX Official Closing Price pursuant to Rule 11.350(f)(3). An LOC order submitted as a pegged order will be rejected. An LOC order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported.[17]

Note, as defined above, MOO and LOO orders (''On-Open orders'') as well as MOC and LOC orders (''On-Close orders'') that are submitted as a pegged order will be rejected. Additionally, any On-open and On-close order submitted with a User instructed display quantity (*e.g.,* as a reserve order with a quantity of shares displayed and a reserve quantity non-displayed) will be accepted; however, the instruction will not be supported, thus the order will be treated as having displayed priority for the order's full size pursuant to proposed Rule 11.350(b)(1)(b) [sic].

The Exchange will not offer an imbalance order type (*i.e.,* an order type that by its terms is designed to solely offset a buy or sell order imbalance in the auction), which is currently offered by Nasdaq, but not by Bats.[18] However, Users who wish to offset buy or sell imbalances in an auction may do so by entering LOO, LOC, and limit orders priced less aggressive than the applicable auction collar, or specifically in the case of an Opening or Closing Auction, non-displayed interest on the Continuous Book with a resting price within the Reference Price Range, which, as described further below, is eligible to offset imbalance without influencing the determination of the clearing price within the Reference Price Range.

Order Types Eligible To Participate in Auctions

Currently, the Exchange begins accepting limit orders with a time-in-force of IOC, FOK, GTT, and SYS for trading at the beginning of the Pre-Market Session and any such orders received by the Exchange are immediately eligible for execution during continuous trading. In addition, limit orders with a time-in-force of GTX or DAY and pegged orders with a time-in-force of DAY that are entered during the Pre-Market Session are queued in the System until the start of the Regular Market Session, or until the order is canceled by the User.[19] The Exchange is proposing to amend Rule 11.190(a)(2)(E) to extend the queuing functionality to market orders with a time-in-force of DAY that are entered during the Pre-Market Session, allowing such orders to queue in the System for participation in the Opening Auction (or Halt Auction, as applicable), except market orders with a time-in-force of DAY that are designated to route pursuant to Rule 11.230(c). The Exchange is proposing to reject market orders with a time-in-force of DAY that are designated to route in an effort to mitigate unnecessary volatility in an IEX-listed security following an auction match where a market order imbalance remains. IEX Auctions are designed to provide Users with the ability to offset market order imbalances prior to the auction match, however in periods of market stress, all market order interest may not be offset prior to the auction match. In such cases, a market order with a time-in-force of DAY that is designated to route that is not executed (in whole or in part) in the Opening Auction would subsequently be routed out to clear all away protected quotations in the market immediately after the auction, exacerbating volatility in a market experiencing instability. Moreover, the Exchange is proposing to make a conforming change to Rule 11.190(a)(1)(E)(iii) and (v) to explicitly identify that limit orders with a time-in-force of DAY or GTX for IEX-listed securities that are entered in the Pre-Market Session are queued for participation in the Opening Auction (or Halt Auction, as applicable).

Accordingly, pursuant to proposed Rule 11.350(a)(1)(A), for an Opening Auction, On-Open orders and market orders with a time-in-force of DAY, as well as limit orders designated with a time-in-force of DAY or GTX are queued on the Opening Auction Book and are eligible for execution[20] in the Opening Auction match in accordance with

[13] The Exchange is also proposing to rename IEX Rule 11.280 so that the name captures the expanded rule provisions.

[14] *See* proposed Rule 11.350(a)(25).

[15] *See* proposed Rule 11.350(a)(21).

[16] *See* proposed Rule 11.350(a)(24).

[17] *See* proposed Rule 11.350(a)(20).

[18] *See, e.g.,* Nasdaq Rule 4702(b)(10) and (13).

[19] *See* IEX Rule 11.190.

[20] The term ''eligible for execution'' or ''eligible to execute'' is in reference to orders that are eligible for possible execution in an IEX auction, subject to the terms of the order, the applicable auction rules, and market conditions.

market conditions.[21] In addition, pursuant to proposed Rule 11.350(a)(2), limit orders on the Continuous Book with a time-in-force of SYS or GTT are eligible for execution in the Opening Auction in accordance with market conditions.[22] Pegged orders queued for the Regular Market Session are not eligible to execute in the Opening Auction.[23] The Exchange is excluding pegged orders from the Opening Auction because pegged orders are not eligible for continuous trading during the Pre-Market Session, and thus such orders do not have a booked price.

For a Closing Auction, pursuant to proposed Rule 11.350(a)(1)(B), MOC and LOC orders are queued on the Closing Auction Book and are eligible for execution in the Closing Auction match in accordance with market conditions. In addition, pursuant to proposed Rule 11.350(a)(2), limit and pegged orders on the Continuous Book with a time-in-force of DAY, GTX, GTT, or SYS, are eligible for execution in the Closing Auction in accordance with market conditions. The Exchange is including pegged orders in the Closing Auction, because such orders are active and resting on the Order Book during continuous trading, and therefore have a booked price that is reflective of the market for the security.

For an IPO Auction, pursuant to proposed Rule 11.350(a)(1)(C), LOO and MOO orders, market orders with a time-in-force of DAY, as well as limit orders with a time-in-force of DAY, SYS, GTX, GTT, FOK, or IOC are accepted during the Order Acceptance Period, queued on the IPO Auction Book, and are eligible for execution in the IPO Auction match in accordance with market conditions. Pegged orders are not eligible to execute in the IPO Auction.[24] Similar to the Opening Auction, the Exchange is excluding pegged orders from the IPO Auction because there is no continuous trading before the IPO auction, and thus pegged orders do not have a booked price.

For a Halt Auction, pursuant to proposed Rule 11.350(a)(1)(D), the following orders are eligible for execution:

- On-Open orders queued prior to Regular Market Hours if a Pre-Market Session halt persists through the start of Regular Market Hours and the Halt Auction is scheduled to occur during the Regular Market Session;
- Limit orders with a TIF of GTT, SYS, FOK, or IOC received during the Order Acceptance Period;
- Limit orders with a TIF of DAY received during the Order Acceptance Period within the Regular Market Session, or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day;
- Limit orders with a TIF of GTX received during the Order Acceptance Period within the Regular Market Session or Post-Market Session, or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day;
- Market orders with a TIF of FOK or IOC received during the Order Acceptance Period within the Regular Market Session;
- Market orders with a TIF of DAY received during the Order Acceptance Period within the Regular Market Session, or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day; and
- Displayed portions of limit orders on the Continuous Book at the time of the halt dissemination.

All orders on the Halt Auction Book are eligible for execution in the Halt Auction in accordance with market conditions. Pegged orders and non-displayed orders (including the non-displayed portion of reserve orders) (collectively, ''non-displayed interest'') that are on the Continuous Book at the time of the halt dissemination are not eligible for execution in the Halt Auction and may be canceled at any time after the halt dissemination, so that interest may be re-entered as Auction Eligible Orders during the Order Acceptance Period as interest eligible for execution in the Halt Auction. As with the Opening and IPO Auctions, pegged orders submitted during the Order Acceptance Period are not eligible for execution in the Halt Auction.[25] After informal discussions with various Members, the Exchange is also proposing to exclude all non-displayed orders (including pegged orders) that were on the Continuous Book at the time of the halt dissemination from the Halt Auction because Users submitting non-displayed orders are generally entrusting the Exchange to price such orders at values that are reflective of the market for a security. In the event of a trading halt, the market is in the process of reestablishing the value of a security, and therefore including non-displayed orders that are priced against a reference price that may not reflect adjustments in valuation resulting from additional information regarding the security during the halt could potentially harm investors.

For a Volatility Auction, pursuant to proposed Rule 11.350(a)(1)(E), the following orders are eligible for execution:

- MOC and LOC orders, if an IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to IEX Rule 11.280(e) would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time;
- Limit orders with a TIF of GTX, GTT, SYS, FOK, or IOC received during the Order Acceptance Period;
- Limit orders with a TIF of DAY received during the Order Acceptance Period within Regular Market Hours;
- Market orders with a TIF of FOK, IOC, or DAY received during the Order Acceptance Period within Regular Market Hours; and
- Displayed portions of limit orders on the Continuous Book at the time of the pause dissemination.

Non-displayed interest (*i.e.,* pegged orders and non-displayed orders, including the non-displayed portion of reserve orders) that were on the Continuous Book at the time of the pause dissemination are not eligible for execution in the Volatility Auction and may be canceled at any time after the LULD trading pause dissemination, so that interest may be re-entered as Auction Eligible Orders during the Order Acceptance Period as interest eligible for execution in the Volatility Auction Book. Pegged orders submitted during the Order Acceptance Period are not eligible for execution in the Volatility Auction.[26] Similar to the Halt Auction, the Exchange is excluding non-displayed orders from the Volatility Auction because Users submitting non-displayed orders are generally entrusting the Exchange to price such orders at values that are reflective of the market for a security. In the event of a volatility trading pause, the security has just experienced sharp price volatility and the market is in the process of

[21] Market orders with a time-in-force of DAY and limit orders with a time-in-force of DAY or GTX are not eligible for continuous trading during the Pre-Market Session, and therefore such orders are queued on the Opening Auction Book, rather than on the Continuous Book. Note, as described below, orders marked IOC or FOK do not rest on the Continuous Book, and therefore are not Auction Eligible Orders in the Opening or Closing Auction.

[22] Limit and market orders may be marked as routable. Routable limit orders that are not fully executed in the Opening Auction are released to the Continuous Book and will be routed in accordance with IEX Rule 11.230(c) (Re-sweep Behavior), subject to the order's instructions.

[23] *See* proposed Rule 11.350(a)(3)(A).

[24] *See* proposed Rule 11.350(a)(3)(B).

[25] *See* proposed Rule 11.350(a)(3)(C).

[26] *See* proposed Rule 11.350(a)(3)(D).

reestablishing the value of a security, and therefore including non-displayed orders that are priced against a reference price that may not reflect adjustments in valuation during the pause could potentially result in auction pricing that is not reflective of the current value of the security.[27]

All AGID modifiers as defined in Rule 11.190(e), and Minimum Quantity instructions as defined in Rule 11.190(b)(11), will not be supported in the Opening, Closing, IPO, Halt, or Volatility Auction [28] match, but will be enforced on all unexecuted shares released to the Continuous Book following the auction match. The Exchange believes that not supporting AGID modifiers in IEX Auctions is consistent with the protection of investors and the public interest because within the context of the aggregated auction match process, counterparties are not considered; only the aggregate available volume for execution is considered. It is illogical to cancel an order that happens to be allocated an execution against an order entered using the same MPID, because both orders execute at the exact same price to the exact same effect where the orders happen to execute against orders of a different MPID. Furthermore, the Exchange believes that supporting AGID modifiers, as well as supporting Minimum Quantity instructions as defined in Rule 11.190(b)(11) in IEX Auctions introduces additional technical complexities to the clearing price determination process, and the Exchange believes providing simplicity in this regard is in the interest of the protection of investors and the public interest.[29]

Definitions

As proposed, IEX Rule 11.350(a) contains certain definitions relevant to IEX Auctions, including the following:

(1) The term ''Auction Book'' refers to the orders specified below that queue prior to the auction match, and shall mean:

(A) For Opening Auctions (*i.e.,* Opening Auction Book):

i. On-Open orders;

ii. Limit orders with a TIF of DAY or GTX; and

iii. Market orders with a TIF of DAY.

(B) For Closing Auctions (*i.e.,* Closing Auction Book):

i. On-Close orders.

(C) For IPO Auctions (*i.e.,* IPO Auction Book):

i. On-Open orders;

ii. Limit orders with a TIF of DAY, GTX, GTT, SYS, FOK, or IOC; and

iii. Market orders with a TIF of DAY.

(D) For Halt Auctions (*i.e.,* Halt Auction Book):

i. On-Open orders queued prior to Regular Market Hours if a Pre-Market Session halt persists through the start of Regular Market Hours and the Halt Auction is scheduled to occur during the Regular Market Session;

ii. Limit orders with a TIF of GTT, SYS, FOK, or IOC received during the Order Acceptance Period;

iii. Limit orders with a TIF of DAY received during the Order Acceptance Period within the Regular Market Session or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day;

iv. Limit orders with a TIF of GTX received during the Order Acceptance Period within the Regular Market Session or Post-Market Session or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day;

v. Market orders with a TIF of FOK or IOC received during the Order Acceptance Period within the Regular Market Session;

vi. Market orders with a TIF of DAY received during the Order Acceptance Period within the Regular Market Session or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day; and

vii. Displayed portions of limit orders on the Continuous Book at the time of the halt dissemination.

(E) For Volatility Auctions (*i.e.,* Volatility Auction Book):

i. On-Close orders, if an IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to IEX Rule 11.280(e) would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time;

ii. Limit orders with a TIF of GTX, GTT, SYS, FOK, or IOC received during the Order Acceptance Period;

iii. Limit orders with a TIF of DAY received during the Order Acceptance Period within Regular Market Hours;

iv. Market orders with a TIF of FOK, IOC, or DAY received during the Order Acceptance Period within Regular Market Hours; and

v. Displayed portions of limit orders on the Continuous Book at the time of the pause dissemination.

(2) The term ''Auction Eligible Order'' shall mean all orders that are eligible for execution in the upcoming auction on the Auction Book and the Continuous Book (collectively, the Order Book) and are not Auction Ineligible Orders; such orders are used by the System to calculate IEX Auction Information and to determine the clearing price of IEX Auctions. For Opening or Closing Auctions, non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in IEX Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price, but will be ranked and eligible for execution in the Opening or Closing Auction match at the order's resting price.

(3) The term ''Auction Ineligible Orders'' refers to the orders specified below that are not eligible for execution in the auction, and shall mean:

(A) For Opening Auctions:

i. Pegged orders.

(B) For IPO Auctions:

i. Pegged orders.

(C) For Halt Auctions:

i. Pegged orders; and

ii. Non-displayed interest on the Continuous Book at the time of the halt.

(D) For Volatility Auctions:

i. Pegged orders; and

ii. Non-displayed interest on the Continuous Book at the time of the pause.

(4) The term ''Continuous Book'' shall be in reference to all orders resting on the Order Book that are not on the Auction Book and are available for continuous trading. Market orders and orders with a TIF of IOC or FOK do not rest on the Continuous Book. During the

[27] Note, for both the Halt and Volatility Auctions, while non-displayed limit orders are not necessarily ''pegged'' to any particular reference price (such as a midpoint pegged order, for example), such orders are subject to the Midpoint Price Constraint pursuant to IEX Rule 11.190(h)(2), which states that non-displayed limit orders posting to the Order Book with a limit price more aggressive than the Midpoint Price is booked and ranked on the Order Book non-displayed at a price equal to the Midpoint Price. To reflect changes to the NBBO, the order is automatically re-priced by the System in response to changes in the NBBO to be equal to the less aggressive of the order's limit price or the Midpoint Price. Accordingly, in volatile markets that have triggered a trading pause or halt, non-displayed limit orders resting on the Order Book that are not actively or algorithmically monitored are likely to have been restricted by the Midpoint Price Constraint. Accordingly, such orders would be priced against a reference price (*i.e.,* the Midpoint Price) that may not reflect adjustments in valuation during the halt or pause, which could potentially harm such investors.

[28] *See* proposed Rules 11.350(c)(2)(C), 11.350(d)(2)(C), 11.350(e)(2)(D), and 11.350(f)(2)(F) and (f)(3)(B)(iii), respectively.

[29] The Exchange notes that Bats does not support broker self-match restrictions in an IPO auction, or on regular market and limit orders in the Opening and Closing auctions. See Bats Rule 11.23(a)(8)(C)(1) [sic] and Bats US Equities Auction Process specification at 9. *See also* NYSE Arca Rule 7.31(i)(2), which states that Orders marked with an STP modifier *will not* be prevented from interacting during any auction. (Emphasis added)

Pre-Market Session, Auction Ineligible Orders queued for the Regular Market Session are not on the Continuous Book. There is no Continuous Book when continuous trading in a security is halted or paused; in the event of a halt or pause, Auction Eligible Orders on the Continuous Book shall be incorporated into the Halt or Volatility Auction Book, as applicable.

(5) The term ''Display Only Period'' shall be in reference to the period of the time during which IEX disseminates IEX Auction Information for IPO, Halt, and Volatility Auctions. The Display Only Period begins thirty (30) minutes prior to the scheduled auction match for an IPO Auction, and the start of the Order Acceptance Period for Halt and Volatility Auctions. The Display Only Period shall end when the applicable auction match occurs.

(6) The term ''Final Consolidated Last Sale Eligible Trade'' shall mean the last trade prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape System (''Consolidated Tape'').

(A) If there is no qualifying Final Consolidated Last Sale Eligible Trade for the current day, the previous official closing price; and

(B) In the case of an IPO or launch of a new issue, the issue price.

(7) The term ''Final Last Sale Eligible Trade'' shall mean the last trade on IEX prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape.

(A) If there is no qualifying Final Last Sale Eligible Trade for the current day, the previous official closing price; and

(B) In the case of an IPO or launch of a new issue, the issue price.

(8) The term ''Hyper-aggressive Auction Orders'' shall mean:

(A) For Opening Auctions, MOO orders and market orders with a TIF of DAY, as well as LOO orders and limit orders with a TIF of DAY or GTX to buy (sell) priced above (below) the latest upper (lower) threshold of the Opening/Closing Auction Collar calculated by the System.

(B) For Closing Auctions, MOC orders and LOC orders to buy (sell) priced above (below) the latest upper (lower) threshold of the Opening/Closing Auction Collar calculated by the System.

(9) The term ''IEX Auction Information'' shall mean the information disseminated pursuant to Rule 11.330(a) regarding the current status of price, size, imbalance information, auction collar information, and other relevant information related to auctions conducted by the Exchange. IEX Auction Information shall include:

(A) Reference Price: The single price at or within the Reference Price Range at which orders on the Auction Book would match if the IEX Auction were to occur at that time of dissemination. The Reference Price is set to the price that maximizes the number of the shares from orders on the Auction Book to be executed in the auction. If more than one price maximizes the number of shares that will execute, the Reference Price is set to the entered price at which shares will remain unexecuted in the auction (*i.e.,* the price of the most aggressive unexecuted order). If more than one price satisfies the above conditions (*i.e.,* shares are maximized at each price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order, resulting in an ''auction price range''), the Reference Price is set to the price within the auction price range that minimizes the distance from either the Volume Based Tie Breaker (if the auction price range includes prices in the Reference Price Range) or the Reference Price Range (if the auction price range does not include prices in the Reference Price Range) at the time of dissemination. In the case of an IPO or Halt Auction, the Reference Price shall be the same as the Auction Book Clearing Price.

(B) Paired Shares: The number of shares from orders on the Auction Book that can be matched with other orders on the Auction Book at the Reference Price at the time of dissemination.

(C) Imbalance Shares: The number of shares from orders on the Auction Book that may not be matched with other orders on the Auction Book at the Reference Price at the time of dissemination.

(D) Imbalance Side: The buy/sell direction of any imbalance at the time of dissemination.

(E) Indicative Clearing Price: The single price at or within the Opening/Closing Auction Collar at which Auction Eligible Orders would match if the IEX Auction were to occur at the time of dissemination pursuant to the procedures for determining the clearing price set forth in the applicable auction rule. In the case of an IPO, Halt, or Volatility Auction, the Indicative Clearing Price shall be the same as the Auction Book Clearing Price.

(F) Auction Book Clearing Price: The single price at which orders on the Auction Book would match if the IEX Auction were to occur at the time of dissemination pursuant to the procedures for determining the clearing price set forth in the applicable auction rule, but shall not be constrained by the Opening/Closing Auction Collar, as applicable. If shares from market orders would remain unexecuted, IEX shall disseminate an indicator for ''market buy'' or ''market sell.''

(G) Collar Reference Price: Opening/Closing Auction Collar Reference Price for the Opening and Closing Auctions. Volatility Auction Collar Reference Price for the Volatility Auction.

(H) Lower Auction Collar: The lower threshold of the Opening/Closing Auction Collar for the Opening and Closing Auctions. The lower threshold of the Volatility Auction Collar for the Volatility Auction.

(I) Upper Auction Collar: The upper threshold of the Opening/Closing Auction Collar for the Opening and Closing Auctions. The upper threshold of the Volatility Auction Collar for the Volatility Auction.

(J) Scheduled Auction Time: The projected time of the auction match.

(K) Extension Number: The total number of automatic Order Acceptance Period extensions an IPO, Halt, or Volatility Auction has received.

(10) The term ''IEX Official Closing Price'' shall mean the price disseminated by the Exchange to the Consolidated Tape as the market center official close of an IEX-listed security.

(11) The term ''IEX Official IPO Opening Price'' shall mean the price disseminated by the Exchange to the Consolidated Tape following an IPO Auction as the market center official open for an initial public offering of an IEX-listed security.

(12) The term ''IEX Official Opening Price'' shall mean the price disseminated by the Exchange to the Consolidated Tape as the market center official open of an IEX-listed security.

(13) The term ''IEX Re-opening Trade'' shall mean the trade resulting from a Halt Auction or Volatility Auction (conducted prior to the Closing Auction Lock-in Time) that is disseminated by the Exchange to the Consolidated Tape as the market center re-opening trade of an IEX-listed security.

(14) Reserved.

(15) The term ''Initial Consolidated Last Sale Eligible Trade'' shall mean the first trade during Regular Market Hours that is last sale eligible and reported to the Consolidated Tape, including the Closing Auction.

(A) If there is no qualifying Initial Consolidated Last Sale Eligible Trade for the current day, the previous official closing price will be used.

(16) The term ''Initial Last Sale Eligible Trade'' shall mean the first trade on IEX during Regular Market Hours that is last sale eligible and reported to the Consolidated Tape, including the Closing Auction.

(A) If there is no qualifying Initial Last Sale Eligible Trade for the current day, the previous official closing price will be used.

(17) The term ''Impermissible Price'' shall mean, for a Volatility Auction, an indeterminable auction price due to a market order imbalance, or an Indicative Clearing Price higher (lower) than the upper (lower) threshold of the Volatility Auction Collar at the scheduled auction match.

(18) Reserved.

(19) The term ''Latest Consolidated Last Sale Eligible Trade'' shall mean the last trade immediately prior to trading in the security being halted or paused that is last sale eligible and reported to the Consolidated Tape.

(A) If there is no qualifying Latest Consolidated Last Sale Eligible Trade for the current day, the previous official closing price.

(20) The term ''Limit-On-Close'' or ''LOC'' shall mean a limit order that specifically requests execution at the IEX Official Closing Price and is designated for execution in the Closing Auction, or in a Volatility Auction when such auction is determining the IEX Official Closing Price pursuant to Rule 11.350(f)(3). An LOC order submitted as a pegged order will be rejected. An LOC order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported.

(21) The term ''Limit-On-Open'' or ''LOO'' shall mean a limit order that specifically requests execution at the IEX Official Opening Price (or the IEX Official IPO Opening Price in the case of an IPO Auction) and is designated for execution in the Opening Auction, IPO Auction, or Halt Auction when queued prior to Regular Market Hours if a Pre-Market Session halt persists through the start of Regular Market Hours. An LOO order submitted as a pegged order will be rejected. An LOO order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported.

(22) The term ''Lock-in Time'' shall mean two (2) minutes prior to the Opening Auction match (*i.e.,* 9:28 a.m.), and ten (10) minutes prior to the Closing Auction match (*i.e.,* 3:50 p.m., or 10 minutes prior to the end of the Regular Market Session on days that IEX is subject to an early closing), at which time:

(A) Auction Eligible Orders on the Auction Book may not be canceled or modified prior to the auction match (*i.e.,* locked in);

(B) Hyper-aggressive Auction Orders are rejected upon receipt; and

(C) IEX begins to disseminate IEX Auction Information.

(23) The term ''Lock-out Time'' shall mean ten (10) seconds prior to the Opening and Closing Auction match, at which time any new Auction Eligible Order is restricted from entering the Auction Book and is rejected upon receipt (*i.e.,* locked out). Orders must be on the Auction Book prior to the Lock-out Time to guarantee eligibility for the auction. Orders submitted to the Continuous Book after the Lock-out Time remain eligible for execution on the Continuous Book, and in the upcoming Opening or Closing Auction match.

(24) The term ''Market-On-Close'' or ''MOC'' shall mean a market order that specifically requests execution at the IEX Official Closing Price and is designated for execution in the Closing Auction, or in a Volatility Auction when such auction is determining the IEX Official Closing Price pursuant to Rule 11.350(f)(3). An MOC order submitted as a pegged order will be rejected. An MOC order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported.

(25) The term ''Market-On-Open'' or ''MOO'' shall mean a market order that specifically requests execution at the IEX Official Opening Price (or the IEX Official IPO Opening Price in the case of an IPO Auction) and is designated for execution in the Opening Auction, IPO Auction, or Halt Auction when queued prior to Regular Market Hours if a Pre-Market Session halt persists through the start of Regular Market Hours. An MOO order submitted as a pegged order will be rejected. An MOO order submitted with a User instructed display quantity pursuant to Rule 11.190(b)(2) will be accepted, but the instruction will not be supported.

(26) The term ''Maximum Percentage'' will vary depending on the midpoint of the Protected NBBO (''Protected Midpoint Price''), and shall mean:

(A) 5% if the Protected Midpoint Price is less than or equal to $25.00;

(B) 2.5% if the Protected Midpoint Price is greater than $25.00 but less than or equal to $50.00; or

(C) 1.5% if the Protected Midpoint Price is greater than $50.00.

(27) The term ''Opening/Closing Auction Collar'' shall mean, collectively, the upper and lower threshold prices at or within which the Opening and Closing Auction match must occur. The Opening/Closing Auction Collar is established by taking the greater of fifty cents ($0.50) or a default threshold percentage of ten percent (10%) applied to the Opening/Closing Auction Collar Reference Price, which shall be added to (subtracted from) the Protected NBO (NBB) to establish the upper (lower) threshold of the Opening/Closing Auction Collar.

(A) If the Protected NBBO is crossed, the greater of fifty cents ($0.50) or a default threshold percentage of ten percent (10%) applied to the Opening/Closing Auction Collar Reference Price, shall be added to (subtracted from) the IEX best offer (bid) to establish the upper (lower) threshold of the Opening/Closing Auction Collar.

(B) If the Protected NBBO, or, when utilized, the IEX best bid and best offer (''IEX BBO''), is not two-sided, the greater of fifty cents ($0.50) or a default threshold percentage of ten percent (10%) applied to the Opening/Closing Auction Collar Reference Price, shall be added to (subtracted from) the Opening/Closing Auction Collar Reference Price to establish the upper (lower) threshold of the Opening/Closing Auction Collar.

(28) The term ''Opening/Closing Auction Collar Reference Price'' shall be the Volume Based Tie Breaker.

(29) The term ''Order Acceptance Period'' shall be in reference to the period of time during which IEX accepts orders submitted for participation in an IPO, Halt, or Volatility Auction. The Order Acceptance Period shall end when the applicable auction match occurs. The Order Acceptance Period shall begin:

(A) For an IPO Auction, 8:00 a.m., but is subject to change;

(B) For a Halt Auction, five (5) minutes prior to the scheduled auction match, or immediately after a Level 1 or Level 2 Market Decline pursuant to Rule 11.280(a)(1)–(3); and

(C) For a Volatility Auction, immediately after the pause dissemination.

(30) The term ''Reference Price Range'' is in reference to, for a Volatility Auction, the prices between and including the applicable Volatility Auction Collar, or, for an Opening or Closing Auction, the prices between and including the Protected NBB and Protected NBO for a particular security where the Protected NBBO is a Valid Protected NBBO.

(A) The Protected NBBO is a ''Valid Protected NBBO'' where:

i. There is both a Protected NBB and Protected NBO for the security;

ii. The Protected NBBO is not crossed; and

iii. The midpoint of the Protected NBBO is less than or equal to the Maximum Percentage away from both the Protected NBB and the Protected NBO.

(B) Where the Protected NBBO is not a Valid Protected NBBO, the IEX BBO will be used where the IEX BBO is a Valid IEX BBO.

i. The IEX BBO is a ''Valid IEX BBO'' where:

1. There is both an IEX best bid and an IEX best offer for the security; and

2. The midpoint of the IEX BBO is less than or equal to the Maximum Percentage away from both the IEX best bid and the IEX best offer.

(C) Where the IEX BBO is not a Valid IEX BBO, the Reference Price Range is set to the higher (lower) price of the following:

i. The Final Consolidated Last Sale Eligible Trade; or

ii. the Protected NBB (NBO), if not crossed, or the IEX best bid (offer).

(D) If there is neither a Protected NBBO nor an IEX BBO, the Reference Price Range will be the Final Consolidated Last Sale Eligible Trade.

(31) The term ''Volatility Auction Collar'' represents the range of prices at or within which the Volatility Auction match can occur, and shall mean:

(A) If the Volatility Auction Collar Reference Price is the Lower (Upper) Price Band, the initial lower (upper) threshold of the Volatility Auction Collar is 5% less (greater) than the Volatility Auction Collar Reference Price, rounded to the nearest passive MPV, and the upper (lower) threshold of the Volatility Auction Collar is the Upper (Lower) Price Band; or

(B) For securities with a Volatility Auction Collar Reference Price of $3.00 or less, the initial lower (upper) threshold of the Volatility Auction Collar is $0.15 less (greater) than the Volatility Auction Collar Reference Price, rounded to the nearest passive MPV and the upper (lower) threshold of the Volatility Auction Collar is the Upper (Lower) Price Band.

(32) The term ''Volatility Auction Collar Reference Price'' shall mean the reference price for calculating the applicable Volatility Auction Collar, and shall equal the price of the Upper or Lower Price Band that triggered the LULD trading pause.

(33) The term ''Volume Based Tie Breaker'' shall mean, for an Opening or Closing Auction, the midpoint of the Reference Price Range. If the Reference Price Range is a single price, the Volume Based Tie Breaker shall be equal to the Reference Price Range. In the case of a Halt Auction, or Volatility Auction that is not determining the IEX Official Closing Price, the Volume Based Tie Breaker shall be equal to the Latest Consolidated Last Sale Eligible Trade. In the case of a Volatility Auction that is determining the IEX Official Closing Price, the Volume Based Tie Breaker shall be equal to the Final Consolidated Last Sale Eligible Trade. In the case of an IPO Auction, the Volume Based Tie Breaker shall be equal to the issue price.

IEX Auction Priority

Pursuant to proposed Rule 11.350(b), orders resting on the Order Book shall be ranked in the Opening, Closing, IPO, Halt, and Volatility Auction based on price-display-time priority, just as they are during normal trading pursuant to IEX Rule 11.220. The proposed auction priority is substantially similar to the auction priority of Nasdaq and Bats.[30] The best priced Auction Eligible Order (the highest priced resting order to buy or the lowest priced resting order to sell) has priority over all other orders to buy (or orders to sell) in all cases. Market orders (including MOO and MOC orders) have precedence over limit orders. Auction Eligible Orders resting on the Continuous Book are ranked by the price at which they are resting on the Continuous Book; Auction Eligible Orders resting on the Auction Book are ranked by the limit price defined by the User, if any (in either case, the orders ''resting price''), as follows:

- Midpoint peg orders are ranked and eligible for execution in the Closing Auction at the less aggressive of the Midpoint Price or the order's limit price, if any.
- Primary peg orders are ranked and eligible for execution in the Closing Auction at the less aggressive of one (1) MPV below (above) the NBB (NBO) for buy (sell) orders or the order's limit price, if any, but may exercise price discretion up (down) to the auction match price, subject to the less aggressive of the NBB (NBO) or the order's limit price, if any, except during periods of quote instability, as defined in IEX Rule 11.190(g). When exercising price discretion, primary peg orders are ranked behind any non-displayed interest at the auction match price for the duration of the Closing Auction. If multiple primary peg orders are exercising price discretion during the Closing Auction, they maintain their relative time priority at the auction match price.
- Discretionary Peg orders are ranked and eligible for execution in the Closing Auction at the less aggressive of the NBB (NBO) for buy (sell) orders or the order's limit price, if any, but may exercise price discretion up (down) to the auction match price, subject to the less aggressive of the Midpoint Price or the order's limit price, if any, except during periods of quote instability, as defined in IEX Rule 11.190(g). When exercising price discretion, Discretionary Peg orders are ranked behind any non-displayed interest at the auction match price for the duration of the Closing Auction. If multiple Discretionary Peg orders are exercising price discretion during the Closing Auction, they maintain their relative time priority at the auction match price.
- Non-displayed limit orders and non-displayed portions of reserve orders on the Continuous Book are ranked and eligible for execution in the Opening or Closing Auction at the less aggressive of the Midpoint Price or the order's limit price.
- Displayed limit orders on the Continuous Book are ranked and eligible for execution in the Opening or Closing Auction at the order's resting price.
- Limit orders, including LOO and LOC orders, on the Auction Book are ranked and eligible for execution in an auction at the order's limit price.

Displayed portions of limit orders on the Continuous Book at the time of a halt or pause dissemination are ranked on the Auction Book by the price at which such orders were resting on the Continuous Book at the time of the halt or pause dissemination.

Equally priced Auction Eligible Orders are ranked by display priority. On-Open and On-Close orders are ranked with display priority. Limit orders with a time-in-force of IOC or FOK are ranked with displayed priority. Displayed orders (including On-Open and On-Close orders) and displayed portions of orders on the Auction Book and Continuous Book will have precedence over non-displayed orders and non-displayed portions of orders on the Auction Book and Continuous Book at a given price.

Equally priced Auction Eligible Orders with the same display priority are ranked in time priority. Where orders to buy (or sell) are ranked at the same price with the same display priority, the oldest order (determined by the order's timestamp) at such price and display shall have precedence at that price and display. Orders are ranked by the time at which they are posted to the Order Book at a given price, the first to be posted at a given price being the oldest. Orders maintain their time priority once booked until (i) an Order on the Auction Book is incremented by

[30] *See e.g.,* Nasdaq Rule 4752(d)(3)(A)–(D), and Bats Rule 11.23(b)(2)(C), describing priority for the Opening Auction.

the User; (ii) an Order on the Auction Book is re-priced by the User; (iii) Minimum Quantity for an order on the Auction Book is amended by the User; or (iv) any one of the events specified in IEX Rule 11.220(a)(1)(C) occurs to an order on the Continuous Book, at which time such order will receive a new timestamp.

IEX Auction Clearing Price Determination

The IEX Auction process is designed to efficiently maximize the number of shares executed at a single price for each of the Opening, Closing, IPO, Halt, and Volatility Auctions. The Exchange is proposing a uniform methodology to determine the clearing price of an auction for IEX-listed securities. Each of the Opening Auction, Closing Auction, IPO Auction, Halt Auction and Volatility Auction operated by IEX will be a double auction to match buy and sell orders at the single price at which the most shares would execute (the ''clearing price,'' ''match price,'' or ''price of the auction''). An Opening, Closing, IPO, Halt, or Volatility Auction for an IEX-listed security will only take place if Auction Eligible Orders have overlapping prices, meaning that the highest bid price is equal to or higher than the lowest offer price (''crossing interest'').

If crossing interest exists, the auction match price will be established by determining the price level that maximizes the number of shares to be executed at a single price. In the event of a volume based tie at multiple price levels, the auction shall occur at the entered price at which shares will remain unexecuted in the auction (*i.e.,* the price of the most aggressive unexecuted order). If more than one price exists at which shares are maximized and at which shares will remain unexecuted in the auction (*i.e.,* shares are maximized at each price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order, resulting in an ''auction price range''), the auction shall occur at the price that minimizes the distance from the Volume Based Tie Breaker within the auction price range (*i.e.,* the price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order that is closest or equal to the Volume Based Tie Breaker).[31]

In the case of an Opening and Closing Auction, if the auction clearing price is below (above) the lower (upper) threshold of the Opening/Closing Auction Collar, the official auction price will be the price at or within the range of prices between the lower (upper) threshold of the Opening/Closing Auction Collar and the lower (upper) threshold of the Reference Price Range that best satisfies the conditions described above, and in no case will the Opening Auction match occur at a price lower (higher) than the lower (upper) threshold of the Opening/Closing Auction Collar. In the case of a Volatility Auction, if the auction clearing price is outside the Volatility Auction Collar, the Volatility Auction Order Acceptance Period shall be extended in accordance with proposed Rule 11.350(f)(2)(C)(ii). In the case of a Halt or IPO Auction, no auction collars are applied. All AGID modifiers as defined in Rule 11.190(e), and Minimum Quantity instructions as defined in Rule 11.190(b)(11), will not be supported in the Opening, Closing, IPO, Halt, or Volatility Auction match, but will be enforced on all unexecuted shares released to the Continuous Book following the auction match.[32]

The following examples are designed to illustrate the clearing price determination process described above. Each example below assumes the Protected NBBO[33] is $10.09 by $10.11, and includes Auction Eligible Orders on the Closing Auction Book at the time of the Closing Auction match:

- Example 1
  - ○ The Closing Auction Book includes the following orders:
    - ▪ LOC order to buy 1,500 shares with a limit price of $10.10; and
    - ▪ LOC order to sell 1,000 shares with a limit price of $10.10.
  - ○ Shares are maximized at $10.10; therefore
    - ▪ 1,000 shares would execute at the IEX Official Closing Price of $10.10.
- Example 2
  - ○ The Closing Auction Book contains the following orders:
    - ▪ LOC order to buy 1,500 shares with a limit price of $10.10; and
    - ▪ MOC order to sell 1,000 shares.
  - ○ Shares are maximized at each price at and between the lower threshold of the Opening/Closing Auction Collar (*i.e.,* $9.08) and $10.10;
  - ○ The price at which shares will remain unexecuted in the auction is $10.10;[34] therefore
    - ▪ 1,000 shares would execute at the IEX Official Closing Price of $10.10.
- Example 3
  - ○ The Closing Auction Book contains the following orders:
    - ▪ LOC order to buy 2,000 shares with a limit price of $10.11;
    - ▪ LOC order to sell 2,000 shares with a limit price of $10.09.
  - ○ The Continuous Book contains the following orders:
    - ▪ Displayed limit order to buy 500 shares with a limit price of $10.09;
    - ▪ Displayed limit order to sell 600 shares with a limit price of $10.11.
  - ○ Shares are maximized at each price at or between $10.09 and $10.11;
  - ○ The range of prices at or between the prices at which shares will remain unexecuted in the auction is $10.09 and $10.11;
  - ○ Because a range of prices exist after evaluating the prior two conditions (*i.e.,* an auction price range), the price closest to the Volume Based Tie Breaker (*i.e.,* the midpoint of the Protected NBBO) within the auction price range is $10.10; therefore
    - ▪ 2,000 shares would execute at the IEX Official Closing Price of $10.10.

For Opening and Closing Auctions, pursuant to proposed Rule 11.350(a)(2), the Exchange is proposing that non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in proposed Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price,[35] but will be ranked and eligible for execution in the Opening or Closing Auction match at the order's resting price. Thus, non-displayed orders will influence the clearing price if such price is at or outside the Reference Price Range, but

[31] The Volume Based Tie Breaker in defined as the midpoint of the Reference Price Range, and in the case of an Opening or Closing Auction is generally the midpoint of the Protected NBBO; for Halt Auctions, it will be the price of the Latest Consolidated Last Sale Eligible Trade; for IPO Auctions it will be the issue price; and for a Volatility Auction, it will be the price of the Latest Consolidated Last Sale Eligible Trade, or the Final Consolidated Last Sale Eligible Trade if the Volatility Auction is determining the IEX Official Closing Price. See proposed Rules 11.350(a)(33) and (30).

[32] *See* proposed Rules 11.350(c)(2)(C), 11.350(d)(2)(C), 11.350(e)(2)(D), and 11.350(f)(2)(F) and (f)(3)(B)(iii), respectively.

[33] *See* Regulation NMS, Rule 600(b)(57).

[34] Note, while shares are maximized at and between the lower threshold of the Opening/Closing Auction Collar ($9.08) and $10.10, the entered price at which shares will remain unexecuted in the auction is $10.10, as $10.10 is the resting price of the most aggressive order where shares remain unexecuted.

[35] Note, non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in proposed Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price and the Indicative Clearing Price disseminated in IEX Auction Information as set forth in proposed Rule 11.350(a)(9)(E).

not if the clearing price is within the Reference Price Range.

The proposed treatment of non-displayed interest on the Continuous Book resting within the Reference Price Range is designed to protect the anonymity of resting non-displayed interest on the Continuous Book during the dissemination of IEX Auction Information.[36] Specifically, the Exchange believes that without such treatment information leakage would occur if the Indicative Clearing Price is closer to the midpoint of the NBBO than the Reference Price that is disseminated via IEX Auction Information. This would indicate that there is non-displayed interest resting on the Continuous Book for at least the size of the imbalance and priced at least as aggressive as the Reference Price.

The following examples are designed to illustrate the clearing price determination process including non-displayed orders on the Continuous Book with a resting price within the Reference Price Range, as described above. Each example below assumes the Protected NBBO is $20.19 by $20.21, and includes a non-displayed order to buy on the Continuous Book, and Auction Eligible Orders on the Closing Auction Book, at the time of the Closing Auction match:

- Example 1
  - ○ The Regular Market Continuous Book Contains the following orders:
    - ▪ Midpoint Peg order to buy 2,500 shares with a resting price of $20.20.
  - ○ The Closing Auction Book includes the following orders:
    - ▪ LOC order to buy 500 shares with a limit price of $20.18; and
    - ▪ LOC order to sell 2,000 shares with a limit price of $20.18.
  - ○ For purposes of determining the clearing price, the Midpoint Peg order is priced to the Protected NBB ($20.19), but remains ranked and eligible to execute at its resting price;
  - ○ Accordingly, shares are maximized at each price between $20.18 and $20.19, and the price at which shares are left unexecuted within such range, is $20.19; therefore
    - ▪ 2,000 shares would execute at the IEX Official Closing Price of $20.19;
  - Both the Midpoint Peg buy order and LOC sell order would receive an execution of 2,000 shares; and
  - The LOC buy order would not receive an execution, because the LOC sell order is fully filled after matching with the Midpoint Peg buy order with superior priority.
- Example 2
  - ○ The Regular Market Continuous Book Contains the following orders:
    - ▪ Midpoint Peg order to buy 2,500 shares with a resting price of $20.20.
  - ○ The Closing Auction Book includes the following orders:
    - ▪ LOC order to buy 500 shares with a limit price of $20.19; and
    - ▪ LOC order to sell 2,000 shares with a limit price of 20.18.
  - ○ For purposes of determining the clearing price, the Midpoint Peg order is priced to the Protected NBB ($20.19), but remains ranked and eligible to execute at its resting price;
  - ○ Accordingly, shares are maximized at each price between $20.18 and $20.19, and the price at which shares are left unexecuted within such range, is $20.19; therefore
    - ▪ 2,000 shares would execute at the IEX Official Closing Price of $20.19;
  - The Midpoint Peg buy order would receive an execution of 2,000 shares;
  - The LOC sell order would receive an execution of 2,000 shares; and
  - The LOC buy order would not receive an execution, because the LOC sell order is fully filled after matching with the Midpoint Peg buy order with superior priority.
- Example 3
  - ○ The Regular Market Continuous Book Contains the following orders:
    - ▪ Primary Peg order to buy 2,500 shares with a resting price of $20.18, and limit price of $20.20.
  - ○ The Closing Auction Book includes the following orders:
    - ▪ LOC order to buy 500 shares with a limit price of $20.19; and
    - ▪ LOC order to sell 2,000 shares with a limit price of 20.19.
  - ○ For purposes of determining the clearing price, the Primary Peg order is priced at its resting price ($20.18) because it is resting outside the Reference Price Range ($20.19 to $20.21); the Primary Peg order is eligible exercise price discretion up to the auction match price, so long as the match price is at or below the less aggressive of the NBB or the order's limit price.
  - ○ Accordingly, shares are maximized at $20.19; therefore
    - ▪ 2,000 shares would execute at the IEX Official Closing Price of $20.19;
  - The LOC buy order would receive an execution of 500 shares;
  - Assuming IEX has determined the quote to be stable pursuant to IEX Rule 11.190(g), the Primary Peg buy order would exercise discretion up to the auction match price and receive an execution of 1,500 shares; and
  - Assuming IEX has determined the quote to be stable pursuant to IEX Rule 11.190(g), the LOC sell order would receive an execution of 2,000 shares. If IEX has determined the quote to be unstable pursuant to IEX Rule 11.190(g), the LOC sell order would receive an execution of 500 shares.
- Example 4
  - ○ The Regular Market Continuous Book Contains the following orders:
    - ▪ Midpoint Peg order to buy 2,500 shares with a resting price of $20.20.
  - ○ The Closing Auction Book includes the following orders:
    - ▪ LOC order to buy 500 shares with a limit price of $20.20; and
    - ▪ LOC order to sell 2,000 shares with a limit price of $20.20.
  - ○ For purposes of determining the clearing price, the Midpoint Peg order is priced to the Protected NBB ($20.19), but remains ranked and eligible to execute at its resting price;
  - ○ Accordingly, shares are maximized at $20.20; therefore
    - ▪ 2,000 shares would execute at the IEX Official Closing Price of $20.20;
  - The LOC buy order would receive an execution of 500 shares;
  - The Midpoint Peg buy order would receive an execution of 1,500 shares; and
  - The LOC sell order would receive an execution of 2,000 shares.
- Example 5
  - ○ The Regular Market Continuous Book Contains the following orders:
    - ▪ Discretionary Peg order to buy 2,500 shares with a resting price of $20.19, and limit price of $20.21.
  - ○ The Closing Auction Book includes the following orders:
    - ▪ LOC order to buy 500 shares with a limit price of $20.20; and
    - ▪ LOC order to sell 2,000 shares with a limit price of $20.20.
  - ○ For purposes of determining the clearing price, the Discretionary Peg order is priced at its resting price ($20.19) because it is resting at the Reference Price Range ($20.19 to $20.21); the Discretionary Peg order is eligible exercise price discretion up to the auction match price, so long as the match price is at or below the less aggressive of the midpoint of the NBBO or the order's limit price.
  - ○ Accordingly, shares are maximized at $20.20; therefore
    - ▪ 2,000 shares would execute at the IEX Official Closing Price of $20.20;
  - The LOC buy order would receive an execution of 500 shares;

[36] The Exchange notes that in the case of an IPO, Halt, or Volatility Auction, there is no continuous trading and therefore no Continuous Book. Accordingly, there would be no non-displayed interest on the Continuous Book to which the proposed functionality would apply.

• Assuming IEX has determined the quote to be stable pursuant to IEX Rule 11.190(g), the Discretionary Peg buy order would exercise discretion up to the auction match price and receive an execution of 1,500 shares; and

• Assuming IEX has determined the quote to be stable pursuant to IEX Rule 11.190(g), the LOC sell order would receive an execution of 2,000 shares. If IEX has determined the quote to be unstable pursuant to IEX Rule 11.190(g), the LOC sell order would receive an execution of 500 shares.

As noted above, the Exchange will not offer an imbalance order type (*i.e.,* an order *type* that by its terms is designed to solely offset a buy or sell order imbalance in the auction), which is currently offered by Nasdaq, but not by Bats.[37] However, Users who wish to offset buy or sell imbalances in an auction may do so by entering LOO, LOC, and limit orders priced within the applicable auction collar, or specifically in the case of an Opening or Closing Auction, non-displayed interest on the Continuous Book with a resting price within the Reference Price Range, which, as described further below, is eligible to offset imbalance within the Reference Price Range without influencing the determination of the clearing price.

After informal discussion with various Members, the Exchange believes that imbalance only order types are generally employed by Users deploying sophisticated auction trading strategies, and are seldom used by long-term or natural investors. Accordingly, the Exchange believes that not offering a special imbalance only order type that is unlikely to garner broad User adoption, while still offering investors the opportunity to offset imbalances using LOO, LOC, and limit orders, or specifically in the case of an Opening or Closing Auction, non-displayed interest on the Continuous Book with a resting price within the Reference Price Range, will simplify the process of participating in auctions and attract more trading interest from a broad range of market participants, thereby resulting in robust price discovery for IEX Auctions, consistent with the protection of investors and the public interest.

The clearing price determination process proposed by the Exchange takes an approach similar to Nasdaq, with certain modifications as described below. Specifically, as proposed, the clearing price determination for both Nasdaq and IEX would first maximize the number of shares executable in the auction at a single price. However, in the event there is more than one price at which shares are maximized, Nasdaq Rule 4752(d)(2)(B) states that the auction shall match at the price that minimizes any imbalance, and if there is more than one price at which shares are maximized and imbalance is minimized, Nasdaq Rule 4752(d)(2)(C) states that the auction shall match at the price at which shares will remain unexecuted in the auction. The Exchange believes that Nasdaq Rule 4752(d)(2)(B) and (C) often arrive at the same price, because the price at which imbalance is minimized is often also the price at which shares remain unexecuted in the auction. Accordingly, the Exchange is proposing to consolidate these two conditions, and instead utilize the price at which shares will remain unexecuted in the auction (*i.e.,* the price of the most aggressive unexecuted order).[38]

Moreover, in the event the clearing price determination process results in a clearing price range (*i.e.,* shares are maximized at each price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order, resulting in an ''auction price range''), the Exchange proposes to utilize the price at or closest the Volume Based Tie Breaker within the auction price range (*i.e.,* the price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order that is closest or equal to the Volume Based Tie Breaker).[39] This differs from Nasdaq in that in the event the clearing price determination process results in a clearing price range, Nasdaq Rule 4752(d)(2)(D) states that the auction shall match at the price that minimizes the distance from the bid-ask midpoint of the inside quotation on Nasdaq prevailing at the time of the auction. The proposed rule is designed to match the auction at the price closest to the Volume Based Tie Breaker (*e.g.,* midpoint of the Protected NBBO). The Exchange believes that when the clearing price determination process results in a clearing price range, matching the auction at the price closest to the midpoint of the Protected NBBO, is consistent with the protection of investors and the public interest, because such prices reflect the broader market for the security.[40]

Lastly, in the event the clearing price determined pursuant to the procedures above is below (above) the lower (upper) threshold of the Opening/Closing Auction Collar in the Opening or Closing Auction, the official auction price will be the price at or within the range of prices between the lower (upper) threshold of the Opening/Closing Auction Collar and the lower (upper) threshold of the Reference Price Range that best satisfies the conditions described above. This differs from Nasdaq in that under Nasdaq Rule 4752(d)(2)(E), if the auction price is outside of the Nasdaq opening or closing auction collars, the auction shall occur at a price within the threshold amounts that best satisfies the conditions of Nasdaq Rule 4752(d)(2)(A) through (D). The Exchange believes that the proposed rule is designed to provide greater clarity to Users regarding the range of prices within which the Opening or Closing Auction will occur (because the range of possible auction match prices is narrower) in the event the clearing price is outside of the collar.

The Exchange notes that the clearing price determination processes utilized by other primary listing markets are not homogeneous. As described above, the Exchange designed IEX Auctions with certain features that are substantially similar to current functionality offered by other listings markets, while making certain changes designed to democratize auction participation among all Members via simplification and transparency. Accordingly, the Exchange believes that the proposed auction design will provide a transparent, efficient, and robust process to aggregate trading interest submitted by a broad range of market participants to be matched at a single clearing price, consistent with the protection of investors and the public interest, and in alignment with issuers' interests.

[37] *See, e.g.,* Nasdaq Rule 4702(b)(10) and (13).

[38] The Exchange notes that in the rare event that Auction Eligible Orders are perfectly matched at multiple prices, the prices at which imbalance is minimized and the prices at which shares will remain unexecuted are different. In such cases, the range of prices within which the auction can occur on Nasdaq would be one (1) MPV less aggressive than the prices within which the auction can occur as proposed by the Exchange. Furthermore, in the event that Auction Eligible Orders are perfectly matched at two prices that create a one cent range, the price at which imbalance is minimized and the price at which shares remain unexecuted is the same.

[39] *See* proposed Rule 11.350(a)(33).

[40] Note, as described in detail below, in the event the Protected NBBO is crossed, the Volume Based Tie Breaker will be the midpoint of a Valid IEX BBO. If there is not a Valid IEX BBO, the Volume Based Tie Breaker will be the higher (lower) of the Final Consolidated Last Sale Eligible Trade, or the Protected NBB (NBO), if not crossed, or the IEX best bid (offer). *See* proposed Rules 11.350(a)(33) and (30).

Reference Price Range and Volume Based Tie Breaker

Each of the Opening Auction, Closing Auction, IPO Auction, Halt Auction, and Volatility Auction operated by IEX will be an auction to match buy and sell orders at the single price at which the most shares would execute. If more than one price maximizes the number of shares to be executed in the auction, and shares are also left unexecuted at more than one price (resulting in an ''auction price range''), the clearing price shall be the price within the auction price range that minimizes the distance from the Volume Based Tie Breaker.[41] Similar to Bats, the Volume Based Tie Breaker for an Opening or Closing Auction will be the midpoint of the Reference Price Range.[42] For a Volatility Auction, the Reference Price Range is defined in proposed Rule 11.350(a)(1)(30) [sic] as the prices between and including the applicable Volatility Auction Collar. For an Opening or Closing Auction, the Reference Price Range is defined in proposed Rule 11.350(a)(1)(30) [sic] as the prices between and including the protected national best bid (''Protected NBB'') and protected national best offer (''Protected NBO'') if the Protected NBBO is valid. The Protected NBBO is valid when there is both a Protected NBB and Protected NBO in the security, the Protected NBBO is not crossed, and the midpoint of the Protected NBBO is less than or equal to the Maximum Percentage away from both the Protected NBB and Protected NBO.[43] The Exchange will utilize Maximum Percentage values identical to those used by Bats,[44] which are as follows: [45]

(A) 5% if the Protected Midpoint Price is less than or equal to $25.00;

(B) 2.5% if the Protected Midpoint Price is greater than $25.00 but less than or equal to $50.00; or

(C) 1.5% if the Protected Midpoint Price is greater than $50.00.

In the event that the Protected NBBO is not valid, the Reference Price Range will be the IEX BBO, if the IEX BBO is a Valid IEX BBO.[46] The IEX BBO is Valid IEX BBO where there is both an IEX best bid and IEX best offer in the security, and the midpoint of the IEX BBO is less than or equal to the Maximum Percentage away from both the IEX best bid and best offer. Where the IEX BBO is not a Valid IEX BBO, the Reference Price Range is set to the higher (lower) price of the Final Consolidated Last Sale Eligible Trade, or the Protected NBB (NBO), if not crossed, or the IEX best bid (offer), which is similar to the Volume Based Tie Breaker used by Bats in the event the midpoint of the NBBO is not valid.[47] If the Reference Price Range is a single price, the Volume Based Tie Breaker shall be equal to the Reference Price Range. In the case of a Halt Auction, or Volatility Auction that is not determining the IEX Official Closing Price, the Volume Based Tie Breaker shall be equal to the Latest Consolidated Last Sale Eligible Trade. In the case of a Volatility Auction that is determining the IEX Official Closing Price, the Volume Based Tie Breaker shall be equal to the Final Consolidated Last Sale Eligible Trade. In the case of an IPO Auction, the Volume Based Tie Breaker shall be equal to the issue price.

The proposed Maximum Percentage validation of the Protected NBBO (or IEX BBO, as applicable) is designed to avoid using an excessively wide spread as the Reference Price Range, or the midpoint price of such spread as the Volume Based Tie Breaker. As described above, in the event the midpoint of the Protected NBBO (or IEX BBO) is greater than the Maximum Percentage away from either the NBB (or IEX best bid) or NBO (or IEX best offer), then the Exchange will utilize prices that reflect the most recent trading or quoting activity (*e.g.,* the Final Consolidated Last Sale Eligible Trade), in an effort for the Reference Price Range and Volume Based Tie Breaker to more closely reflect the current market for the security.

Under proposed Rule 11.350(a)(6), the Final Consolidated Last Sale Eligible Trade will be the last trade prior to the end of Regular Market Hours, or where applicable, prior to trading in the security being halted or paused, that is last sale eligible and reported to the Consolidated Tape. If no such transaction was executed in accordance with the preceding sentence, then the Final Consolidated Last Sale Eligible Trade will be the previous official closing price, or the issue price in the case of an IPO or launch of a new issue. Under proposed Rule 11.350(a)(19), the Latest Consolidated Last Sale Eligible Trade will be the last trade immediately prior to trading in the security being halted or paused that is last sale eligible and reported to the Consolidated Tape. If no such transaction was executed in accordance with the preceding sentence, then the Latest Consolidated Last Sale Eligible Trade will be the previous official closing price.[48] The Exchange believes that utilizing the final (latest) consolidated last sale eligible trade is consistent with the protection of investors and the public interest in that such price best reflects the broader market for the security.

Auction Collars

Opening/Closing Auction Collar

Pursuant to proposed Rule 11.350(a)(27), the Opening and Closing Auction match must occur at or within the upper and lower thresholds of the Opening/Closing Auction Collar. If the clearing price determination results in a clearing price below (above) the lower (upper) threshold of the Opening/Closing Auction Collar, the price of the auction will be set to the price at or within the range of prices between the lower (upper) threshold of the Opening/Closing Auction Collar and the lower (upper) threshold of the Reference Price Range that best satisfies the clearing price determination.[49]

The Opening/Closing Auction Collar shall mean, collectively, the upper and lower threshold prices at or within which the Opening and Closing Auction match must occur. The Opening/Closing Auction Collar is established by taking the greater of fifty cents ($0.50) or a default threshold percentage of ten

[41] Generally, the Volume Based Tie breaker will be the midpoint of the Protected NBBO.

[42] *See* proposed Rules 11.350(a)(33) and 11.350(a)(30). *See also* Bats Rule 11.23(a)(23).

[43] Note, the Volume Based Tie Breaker is distinguishable from Bats in that the Exchange will utilize the midpoint of a valid *Protected* NBBO, whereas Bats utilizes the midpoint of the NBBO (emphasis added).

[44] Bats Rule 11.23(a)(23) states that ''the Maximum Percentage will be determined by the Exchange and will be published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto.'' The Bats US Equities Auction Process specification (Version 1.5.1) identifies the Maximum Percentage values at 5.

[45] The Exchange anticipates modifying the Maximum Percentage values in response to market-wide events that are driving price volatility, and would therefore benefit from temporarily widening such values in the interest of allowing robust price discovery, consistent with the protection of investors and the public interest. The Exchange notes that modification of the Maximum Percentage values are subject to the provisions of Section 19(b)(1) under the Act, and Rule 19b–4 thereunder. See 15 U.S.C. 78s(b)(1), and 17 CFR 240.19b–4.

[46] Nasdaq utilizes a similar volume based tie-breaker, which is defined as the bid-ask midpoint of the inside quote on the Nasdaq order book prevailing at 09:30 a.m. *See e.g.,* Nasdaq Rule 4752(d)(2)(D).

[47] *See* Bats Rule 11.23(a)(23), except that Bats does not test the Final Last Sale Eligible Trade against the available quotations in the market. The proposed functionality is designed to avoid providing a reference price beyond the best protected bid or offer.

[48] Collectively, the Final Consolidated Last Sale Eligible Trade and the Latest Consolidated Last Sale Eligible Trade are substantially similar in definition to the Final Last Sale Eligible Trade used by Bats pursuant to Bats Rule 11.23(a)(9), except that the Exchange does not require that the last sale eligible trade have been executed on the Exchange within one second prior to the auction match, or where applicable, the halt, or pause. See Bats Rule 11.23(a)(9).

[49] *See* proposed Rules 11.350(c)(2)(B)(iv) and 11.350(d)(2)(B)(iv).

percent (10%) applied to the Opening/Closing Auction Collar Reference Price (defined as the Volume Based Tie Breaker, which is generally the midpoint of the Protected NBBO), which shall be added to (subtracted from) the Protected NBO (NBB) to establish the upper (lower) threshold of the Opening/Closing Auction Collar. The Opening/Closing Auction Collar default threshold is identical to the default auction collar thresholds used by Nasdaq; however, Nasdaq utilizes the midpoint of the best bid and offer on Nasdaq's book as the collar reference price.[50]

The Exchange is proposing to utilize a default threshold percentage of ten percent (10%) for the Opening/Closing Auction Collar because, based on informal discussion with various Members, as well as Nasdaq's usage of identical default threshold percentage values, such values typically provide an appropriate range within which price discovery may occur to maximize the number of shares executed in the auction. Furthermore, the Exchange believes utilizing the midpoint of the Protected NBBO to establish the Opening/Closing Auction Collar Reference Price is consistent with the protection of investors and the public interest in that the Protected NBBO represents the range of prices that best reflect the market for a security. Furthermore, utilizing the midpoint of the Protected NBBO may be less susceptible to volatility and manipulation, because in order to move the midpoint of the Protected NBBO to influence the auction, one or more Users would need to sweep the entire market, rather than simply entering aggressive interest on the Exchange.[51]

For example, if the Protected NBBO is $10.00 × $11.00, then the Opening/Closing Auction Collar Reference Price equals $10.50 and the threshold percentage is 10%, resulting in a threshold value of $1.05 (10% of $10.50 = $1.05). This threshold value is then added to the Protected NBO and subtracted from the Protected NBB to obtain the auction's Opening/Closing Auction Collar. In this example, it would result in a lower threshold of $8.95 ($10.00 − $1.05 = $8.95) and an upper threshold of $12.05 ($11.00 + $1.05 = $12.05), thus creating a range of $8.95 to $12.05, at or within which the auction can occur. This means $8.95 is the lowest price at which the auction can occur and $12.05 is the highest price at which it can occur. The Opening/Closing Auction Collar is dynamic, and as the Protected NBBO changes, the Opening/Closing Auction Collar updates to reflect such changes.

If the Protected NBBO is crossed, the Opening/Closing Auction Collar will be the greater of fifty cents ($0.50) or a default threshold percentage of ten percent (10%) applied to the Opening/Closing Auction Collar Reference Price (defined as the Volume Based Tie Breaker, which in the case of a crossed market, is the midpoint of the IEX BBO), which shall be added to (subtracted from) the IEX best offer (bid) to establish the upper (lower) threshold of the Opening/Closing Auction Collar.[52] If the Protected NBBO, or, when utilized, the IEX BBO is not two-sided (*i.e.,* do not have both a bid and offer), the greater of fifty cents ($0.50) or a default threshold percentage of ten percent (10%) will be applied to the Opening/Closing Auction Collar Reference Price (defined as the Volume Based Tie Breaker, which in the event the Protected NBBO or IEX BBO do not exist, is the Final Consolidated Last Sale Eligible Trade), shall be added to (subtracted from) the Opening/Closing Auction Collar Reference Price to establish the upper (lower) threshold of the Opening/Closing Auction Collar.

Volatility Auction Collar

Pursuant to proposed Rule 11.350(a)(31), the Volatility Auction match must occur at or within the upper and lower thresholds of the Volatility Auction Collar. If there is a market order imbalance or the clearing price determination arrives at a clearing price above (below) the upper (lower) threshold of the Volatility Auction Collar, the Volatility Auction Order Acceptance Period will be extended five (5) minutes due to an Impermissible Price and the Volatility Auction Collar will be updated as described below.

If the Volatility Auction Collar Reference Price (defined in proposed Rule 11.350(a)(32)) [sic] as the Upper or Lower LULD Price Band that triggered the LULD trading pause) is the Lower (Upper) Price Band, the initial lower (upper) threshold of the Volatility Auction Collar is five percent (5%) less (greater) than the Volatility Auction Collar Reference Price, rounded to the nearest passive MPV and the upper (lower) threshold of the Volatility Auction Collar is the Upper (Lower) Price Band. For securities with a Volatility Auction Collar Reference Price of three dollars ($3.00) or less, the initial lower (upper) threshold of the Volatility Auction Collar is fifteen cents ($0.15) less (greater) than the Volatility Auction Collar Reference Price, rounded to the nearest passive MPV and the upper (lower) threshold of the Volatility Auction Collar is the Upper (Lower) Price Band. The Volatility Auction Collar, as proposed, is identical to the auction collars imposed by Bats, Nasdaq, and Arca when conducting an auction to resume a security subject to an LULD trading pause.[53]

Furthermore, the proposed Volatility Auction Collar functionality is consistent with the commitment made by each primary listing exchange set forth in Amendment 12 to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'') to file rule changes with the Commission under Section 19(b) of the Exchange Act to amend its respective trading practice for automated reopening's following a trading pause consistent with a standardized approach agreed to by Limit Up-Limit Down Plan Participants that would allow for extensions of an LULD trading pause if equilibrium cannot be met for a reopening price within specified parameters.[54] At the beginning of a Volatility Auction Order Acceptance Period extension caused by a market order imbalance or an Indicative Clearing Price higher (lower) than the upper (lower) threshold of the Volatility Auction Collar (in either case, an ''Impermissible Price''), the upper (lower) threshold of the Volatility Auction Collar will be increased (decreased) by five percent (5%) in the direction of the Impermissible Price, rounded to the nearest passive MPV. For

[50] *See e.g.,* Nasdaq Rule 4752(d)(2)(E).

[51] The Exchange anticipates modifying such benchmarks and thresholds in response to market-wide events that are driving price volatility, and would therefore benefit from temporarily widening threshold values in the interest of allowing robust price discovery, consistent with the protection of investors and the public interest. The Exchange notes that modification of the default threshold percentage values for the Opening/Closing Auction Collar are subject to the provisions of Section 19(b)(1) under the Act, and Rule 19b–4 thereunder. See 15 U.S.C. 78s(b)(1), and 17 CFR 240.19b–4.

[52] In the event the Protected NBBO is crossed, the Exchange will utilize the midpoint of the IEX BBO, which as noted above, is substantially similar to Nasdaq. *See e.g.,* Nasdaq Rule 4752(d)(2)(E).

[53] *See* 81 FR 75875 (November 1, 2016) (SR–BatsBZX–2016–61); 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR–NASDAQ–2016–131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (File No. SR–NYSEArca–2016–130).

[54] *See* for example, Securities Exchange Act Release Nos. 79162 (October 26, 2016), 81 FR 75875 (November 1, 2016) (SR–BatsBZX–2016–61); 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR–NASDAQ–2016–131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (File No. SR–NYSEArca–2016–130) and Securities and Exchange Act Release No. 34–79410; File No. 4–631 (Notice of Filing of the Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

securities with a Volatility Auction Collar Reference Price of three dollars ($3.00) or less, the upper (lower) threshold of the Volatility Auction Collar will be increased (decreased) in fifteen-cent ($0.15) increments in the direction of the Impermissible Price, rounded to the nearest passive MPV.

For example, if the Lower and Upper Price Bands are $10.00 and $11.00, respectively, and a pause is triggered following a Limit State at the Lower Price Band, the Volatility Auction Collar Reference Price would be equal to the Lower Price Band, $10.00. The lower threshold of the Volatility Auction Collar (''lower Volatility Auction Collar'') would be calculated by subtracting 5% of the Volatility Auction Collar Reference Price, or $0.50 (5% of $10.00 = $0.50), from the Volatility Auction Collar Reference Price. The upper threshold of the Volatility Auction Collar (''upper Volatility Auction Collar'') would be equal to the Upper Price Band. In this example, it would result in a lower Volatility Auction Collar of $9.50 ($10.00 − $0.50 = $9.50) and an upper Volatility Auction Collar of $11.00, thus creating a range of $9.50 to $11.00, within which the Volatility Auction can occur. This means $9.50 is the lowest price at which the Volatility Auction can occur and $11.00 is the highest price at which it can occur.

The Volatility Auction Collar is static during the Order Acceptance Period and only updates at the beginning of each five (5) minute Volatility Auction Order Acceptance Period extension caused by an Impermissible Price. In this example, if the LULD trading pause was triggered at 12:00 p.m., the above calculated Volatility Auction Collar would be in effect during the Order Acceptance Period from 12:00 until 12:05 p.m. To continue the example, if the Indicative Clearing Price was above the upper Volatility Auction Collar at the time of the scheduled auction match, 12:05 p.m., then the Volatility Auction would receive an extension of five (5) minutes (the ''Initial Extension Period'') and the upper Volatility Auction Collar would be updated by adding 5% of the upper Volatility Auction Collar, or $0.55 (5% of $11.00 = $0.55), to the upper Volatility Auction Collar.[55] The lower Volatility Auction Collar remains unchanged. In this example, it would result in an upper Volatility Auction Collar of $11.55 ($11.00 + $0.55 = $11.55) and a lower Volatility Auction Collar of $9.50, thus creating a range of $9.50 to $11.55, within which the Volatility Auction can now occur. This means $9.50 is the lowest price at which the Volatility Auction can occur and $11.55 is the highest price at which it can now occur at the next scheduled auction match five (5) minutes from now, at 12:10 p.m.

Furthermore, continuing the example, if the Indicative Clearing Price was below the lower Volatility Auction Collar at the time of the scheduled auction match of 12:10 p.m., then the Volatility Auction would receive an extension of five (5) minutes (an ''Additional Extension Period'') and the lower Volatility Auction Collar would be updated by subtracting 5% of the lower Volatility Auction Collar, or $0.47 (5% of $9.50 = $0.47, when rounded to the nearest passive MPV), from the lower Volatility Auction Collar.[56] Thus, it would result in a lower Volatility Auction Collar of $9.03 ($9.50 − $0.47 = $9.03) and an upper Volatility Auction Collar or $11.55, creating a range of $9.03 to $11.55 within which the Volatility Auction can now occur. This means $9.03 is the lowest price at which the Volatility Auction can occur and $11.55 is the highest price at which it can now occur, and the Exchange shall attempt to conduct a Volatility Auction every one second during the course of each Additional Extension Period until the clearing price falls at or within the Volatility Auction Collar.

Opening Auction

Order Entry and Cancellation Before Opening Auction

As proposed in Rule 11.350(c)(1), the Exchange will allow Users to submit orders eligible for execution in the Opening Auction at the beginning of the Pre-Market Session, which begins at 8:00 a.m.[57] Any orders designated for the Opening Auction Book will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. Auction Ineligible Orders with a TIF of IOC or FOK will be rejected prior to the auction match; Auction Ineligible Orders that may rest on the Order Book will be queued and maintained prior to the auction match in accordance with Rule 11.220(a)(1). Orders on the Opening Auction Book, as proposed, would include MOO orders, LOO orders, market orders with a time-in-force of DAY,[58] and limit orders with a time-in-force of DAY or GTX. In addition to orders on the Opening Auction Book, limit orders on the Continuous Book with a time-in-force of SYS or GTT are eligible to execute in the Opening Auction (''Pre-market Continuous Book'').

Pursuant to proposed Rule 11.350(c)(1)(B), beginning at the Opening Auction Lock-in Time (*i.e.,* 9:28 a.m.), the Opening Auction will be subject to certain ''lock-in'' and ''lock-out'' restrictions. Specifically, Users may enter, cancel, or modify Auction Eligible Orders until the Opening Auction Lock-in Time, at which time orders on the Opening Auction Book can no longer be canceled or modified before the Opening Auction match. After the Opening Auction Lock-in Time, the Exchange will begin to reject Hyper-aggressive Auction Orders upon entry. Hyper-aggressive Auction Orders, as proposed, include market and MOO orders, as well as LOO and limit orders with a time-in-force of DAY or GTX with a limit price more aggressive than the latest Opening/Closing Auction Collar calculated by the System (*i.e.,* buy (sell) orders priced above (below) the latest upper (lower) threshold of the Opening/Closing Auction Collar calculated by the System). Bats implements a similar Opening Auction cut-off time (9:28 a.m.), at which time LOO and MOO as well as market orders will be rejected (and Regular Hours Only (RHO) orders[59] are converted to Late Limit On-Open (LLOO) orders).[60] In the context of the IEX Opening Auction, such orders are similar to the order types on the Opening Auction Book. Furthermore, Bats restricts Users from canceling or modifying Eligible Auction Orders between the Lock-out Time and the auction match, except for RHO orders, which may be canceled [sic] until the auction match.[61] Similarly, Nasdaq also applies a 9:28 a.m. cut-off time.[62]

[55] *See* proposed Rules 11.350(f)(2)(C)(ii), and 11.350(f)(2)(D).

[56] *See* proposed Rule 11.350(f)(2)(D).

[57] All times referenced herein are Eastern Time.

[58] Market orders with a time-in-force of DAY will be functionally equivalent to MOO orders in the Opening Auction (*i.e.,* such orders will be executable at the Opening Auction match price, and any unfilled shares will be immediately canceled following the Opening Auction match). Market orders with a time-in-force other than DAY will not be eligible for execution in the Opening Auction.

[59] *See* Bats Rule 11.9(b)(7), defining Regular Hours Only (''RHO'') as a time in force applied to a limit or market order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions for BZX listed securities and the Opening Process for non-BZX-listed securities (as such terms are defined in Rule 11.23 and 11.24). Any portion of a market RHO order will be cancelled immediately following any auction in which it is not executed.

[60] *See e.g.,* Bats Rule 11.23(b)(1)(A).

[61] *See, e.g.,* Bats Rule 11.23(b)(1)(A)–(B). The Commission notes that Bats Rule 11.23(b)(1)(B) provides that ''RHO limit orders designated for the Opening Auction may be modified, but not cancelled, between 9:28 a.m. and 9:30 a.m.''

[62] *See* Nasdaq Rules 4702(b)(8), (9), and (10), as well as Nasdaq Rule 4752(a)(7), which sets forth the

Continued

The Exchange is proposing a similar approach to Bats and Nasdaq, in applying a 9:28 a.m. Lock-out [sic][63] Time where LOO and MOO orders are no longer accepted [sic][64] and may no longer be modified or canceled; however, after informal discussion with various Members, the Exchange is proposing that LOO orders and limit orders with a time-in-force of DAY or GTX will continue to be accepted until the Opening Auction Lock-out Time (*i.e.,* 9:29:50 a.m., ten (10) seconds prior to the Opening Auction match) so long as they are not Hyper-aggressive Auction Orders, which will allow Users to continue to express interest, and offset imbalances via orders designated for the Auction Book in the minutes leading up to the auction match. Such orders entered into the Auction Book after the Lock-in Time cannot be canceled or modified. Furthermore, Hyper-aggressive Auction Orders will be rejected, which is designed to minimize the increase of imbalances or large price swings resulting from aggressively priced orders in the Auction Book during the last two minutes of the auction process. Instead, the Exchange is proposing to allow for price discovery to occur on the Auction Book and Continuous Book within the applicable auction collars leading up to the auction match, allowing for a convergence of the Auction Book with the Continuous Book to establish equilibrium. The Exchange notes that allowing Users to offset imbalances on the Auction Book after the Lock-in Time is designed to promote stability and equilibrium leading into the auction match because such orders are not able to be canceled or modified after entry (*i.e.,* they are locked-in), which is in direct contrast with offsetting orders on the Continuous Book that may be fleeting, because they are eligible for cancellation, modification, and execution until the auction match.

Orders eligible to join the Opening Auction Book that are received after the Opening Auction Lock-out Time will be rejected upon entry. Limit orders designated for the Pre-Market Continuous Book (as well as Auction Ineligible Orders) may continue to be entered and modified or canceled at any time prior to execution.[65] Pegged orders may be submitted, canceled, and/or modified beyond the Opening Auction Lock-in Time and Lock-out Time, and will not be eligible for execution in the Opening Auction. The proposed Lock-Out Time of 9:29:50 a.m., ten (10) seconds prior to the Opening Auction, is designed to freeze the Auction Book, and provide Users an opportunity to offset any remaining imbalance by submitting limit orders on the Continuous Book.

Opening Auction Process for IEX-Listed Securities

Pursuant to proposed Rule 11.350(c)(2), beginning at the Opening Auction Lock-in Time and updated every one second thereafter, the Exchange will disseminate IEX Auction Information via electronic means, as described below. Auction Eligible Orders will be ranked and maintained in accordance with IEX Auction Priority, described above. The Exchange will attempt to conduct an Opening Auction for all IEX-listed securities at the start of Regular Market Hours (*i.e.,* 9:30 a.m.) in accordance with the clearing price determination process, described above, and set forth in proposed Rule 11.350(c)(2)(B). All orders eligible for execution in the Opening Auction (*i.e.,* orders on the Opening Auction Book and orders on the Pre-Market Continuous Book) are Auction Eligible Orders. The resting price (as defined in proposed Rule 11.350(b)(1)(A)(i)) of Auction Eligible Orders are used to calculate the Indicative Clearing Price disseminated in IEX Auction Information, and the auction match price. As described above, non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price (and the Indicative Clearing Price disseminated in IEX Auction Information every one second leading into the auction match), but will be ranked and eligible for execution in the Opening Auction match at the order's resting price.[66]

Pursuant to proposed Rule 11.350(c)(2)(C), Auction Eligible Orders matched in the Opening Auction will execute in accordance with IEX Auction Priority, as described above. Market and MOO orders have priority over all other Auction Eligible Orders, and to the extent there is executable contra side interest, such market and MOO orders will execute at the IEX Official Opening Price in accordance with time priority. After the execution of all market and MOO orders, the remaining Auction Eligible Orders (*i.e.,* LOO orders and limit orders with a time-in-force of DAY, GTT, GTX, or SYS) with a resting price more aggressive than the IEX Official Opening Price will be executed in price-display-time priority at the IEX Official Opening Price. All remaining Auction Eligible Orders with a resting price equal to the IEX Official Opening Price shall execute in display-time priority at the IEX Official Opening Price. Upon completion of the Opening Auction for IEX-listed securities (or the IEX Halt Auction during the Regular Market Session for IEX-listed securities that have not traded during the Regular Market Session on that trading day), the IEX Official Opening Price for the security will be disseminated to the Consolidated Tape along with a bulk execution. The IEX Official Opening Price will be the price of the auction. If a security does not have an Opening Auction (*e.g.,* there is insufficient crossing interest to conduct an Opening Auction), the security will be released for trading pursuant to proposed Rule 11.350(c)(3), described below, and the IEX Official Opening Price will be the price of the Initial Last Sale Eligible Trade.[67]

Under proposed Rule 11.350(c)(2)(D), if an IEX-listed security is subject to a Pre-Market Session halt, all orders on the Opening Auction Book will remain open. Users may resume submission of new or modifications to existing Auction Eligible Orders for the halted security during the Order Acceptance Period. Users may cancel open Auction Eligible Orders at any time during the halt. If a halt persists through the start of Regular Market Hours, no Opening

various order types eligible to participate in the Nasdaq cross, as well as the various applicable timing restrictions.

[63] The Commission notes that, for opening auctions, IEX is proposing a Lock-*in* (not Lock-*out*) time of 9:28 a.m. *See* proposed Rule 11.350(a)(22) (defining ''Lock-in Time'').

[64] The Commission notes that, for opening auctions, IEX is proposing to: (1) Accept LOO orders until the Lock-out time as long as they are not Hyper-aggressive Auction Orders, and (2) not accept MOO orders after the Lock-in Time.

[65] Bats offers identical functionality for all Continuous Book orders eligible for execution in the Bats Pre-Opening Session. *See* Bats Rule 11.23(b)(1)(C). Similarly, NYSE Arca allows orders to enter the Continuous Book after the Opening and Closing Auction Imbalance Freeze. *See* Arca Rule 7.35(c)(3)(D). Accordingly, the Exchange believes that allowing orders to enter the Continuous Book and be eligible for execution in the auction match until immediately before the auction match does not present any unique concerns regarding attempted manipulation of the auction match. The Exchange notes that pursuant to the Regulatory Services Agreement between FINRA and the Exchange, FINRA will be running surveillance patterns to identify potentially manipulative trading activity in IEX Auctions. Furthermore, the Exchange is developing internal market quality surveillances to identify potentially manipulative trading activities.

[66] *See* proposed Rule 11.350(a)(2).

[67] *See, e.g.,* Nasdaq Rule 4753(b)(4) regarding the official Nasdaq opening price for stocks that are subject to a pre-market halt, which is similar to the functionality proposed by the Exchange concerning the official opening price in the event there is no Opening Auction for a security due to a lack of crossing interest. *See* also proposed Rule 11.350(a)(16).

Auction will occur, orders on the Opening Auction Book (*i.e.,* MOO orders, LOO orders, limit orders with a time-in-force of DAY or GTX, and market orders with a time-in-force of DAY) will become part of the Halt Auction Book, and the Halt Auction will determine the IEX Official Opening Price in accordance with Rule 11.350(e) below. The Exchange believes that transferring orders queued on the Opening Auction Book to the Halt Auction if a halt persists through the start of Regular Market Hours is in the best interest of investors and the public interest, because Users will not need to account for auction interest that is canceled back, and subsequently be required resubmit such interest during the Order Acceptance Period. The Exchange believes this process represents a simplified way for Users to submit interest for participation in the auction that is determining the IEX Official Opening Price for an IEX-listed security, and in the event the Halt Auction is determining such price, the Exchange must incorporate such On-Open interest in order to ensure robust price discovery. If there is insufficient crossing interest to complete the Halt Auction, the transition to the Regular Market Session shall be conducted pursuant to proposed Rule 11.350(e)(3), described below, no auction will occur and the IEX Official Opening Price will be the price of the Initial Last Sale Eligible Trade.[68]

Under proposed Rule 11.350(c)(2)(E), the Halt Auction will determine the IEX Official Opening Price for an IEX-listed security pursuant to Rule 11.350(e) below if a Halt Auction is scheduled to occur during the Regular Market Session, and IEX has not determined an IEX Official Opening Price due to (i) an overnight trading halt, or (ii) a lack of crossing interest during the Opening Auction, there is no Initial Last Sale Eligible Trade, and the security is subsequently halted. Similarly, under proposed Rule 11.350(c)(2)(F), The Volatility Auction will determine the IEX Official Opening Price for an IEX-listed security pursuant to Rule 11.350(f) below if IEX has not determined an IEX Official Opening Price due to a lack of crossing interest during the Opening Auction, there is no Initial Last Sale Eligible Trade, and the security is subsequently paused.

Opening Auction Contingency Procedures

When a disruption occurs that prevents the execution of the Opening Auction as set forth above, IEX shall apply the Opening Auction Contingency Procedures pursuant to proposed Rule 11.350(c)(4). Specifically, IEX will publicly announce that no Opening Auction will occur, and the price of the Initial Consolidated Last Sale Eligible Trade will be used for the IEX Official Opening Price.[69] All orders on the Order Book will be canceled, and IEX will open the security for trading without an auction. If a security's IEX Official Opening Price cannot be determined based on this procedure, IEX will not publish an Official Opening Price for the security. The Regular Market Session will begin either as scheduled, or upon resolution of the disruption that triggered IEX to operate the Opening Auction Contingency Procedures. The Exchange believes that providing transparent Opening Auction Contingency Procedures is consistent with the protection of investors and the public interest in that Users will have more clarity regarding the methodology for arriving at the IEX Official Opening Price and the status of open orders, therefore allowing for such Users to resubmit such interest in the Regular Market Session, or re-route such interest to an alternate trading center after IEX has opened the security for trading. In addition, the Opening Auction Contingency Procedures are designed to ensure the orderly and timely opening of IEX-listed securities, which will help to ensure a fair and orderly market for securities listed on the Exchange.

Transition to Regular Market Session

Pursuant to proposed Rule 11.350(c)(3), LOO, MOO, and market orders that are not fully executed at the conclusion of the Opening Auction will be canceled immediately after the Opening Auction match. Limit orders to buy (sell) with a TIF of DAY or GTX and a limit price above (below) the upper (lower) threshold of the Opening/Closing Auction Collar that are not fully executed at the conclusion of the Opening Auction will be canceled immediately after the Opening Auction match.[70] All remaining shares from Auction Eligible Orders that are not canceled by the System immediately after the Opening Auction match, along with all Auction Ineligible Orders queued for trading in the Regular Market Session, shall be released to the Continuous Book for trading in the Regular Market Session, subject to the orders' instructions. Routable orders that are released to the Continuous Book will be routed in accordance with IEX Rule 11.230(c) (Re-Sweep Behavior), subject to the orders instructions.

Closing Auction

Order Entry and Cancellation Before Closing Auction

As proposed in Rule 11.350(d)(1), the Exchange will allow Users to submit orders eligible for execution in the Closing Auction at the beginning of the Pre-Market Session, or at the beginning of the Order Acceptance Period for an IPO, which in both cases begins at 8:00 a.m. Any MOC and LOC orders designated for the Closing Auction Book will be queued until the end of the Regular Market Session (*e.g.,* 4:00 p.m., or such earlier time as the Regular Market Session ends on days that IEX is subject to an early closing), at which time they will be eligible to be executed in the Closing Auction. Orders on the Closing Auction Book, as proposed, would include and be limited to MOC and LOC orders. In addition to orders on the Closing Auction Book, limit and pegged orders on the Continuous Book with a time-in-force of DAY, GTX, GTT, or SYS are eligible for execution in the Closing Auction (''Regular Market Continuous Book'').[71] All orders eligible for execution in the Closing Auction (*i.e.,* orders on the Closing Auction Book and orders on the Regular Market Continuous Book) are Auction Eligible Orders. The resting price (as defined in proposed Rule 11.350(b)(1)(A)(i)) of Auction Eligible Orders are used to calculate the auction match price, and the Indicative Clearing Price disseminated in IEX Auction Information. Non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price (and determining the Indicative Clearing

[68] *See* proposed Rule 11.350(a)(16).

[69] Note, the Exchange intends to disseminate a System Status Alert to publicly announce contingency plans, which automatically publishes an email alert, twitter update, and text message to all persons registered to receive such alerts, as well as publishing to the IEX public Web site. To register for System Status Alerts, visit *https://www.iextrading.com/status/#/.*

[70] The Exchange's cancellation of MOO, LOO, and market orders, as well as limit orders with a time-in-force of DAY or GTX with a limit price more aggressive than Opening Auction match price that are not executed in the auction match is identical to order handling offered by Bats pursuant to Bats Rule 11.23(b)(3)(B)–(C), which states that RHO orders queued for the Opening Auction with a limit price more aggressive than the auction match that are not executed in the auction match will be canceled following the auction match.

[71] The following types of orders are not eligible for execution in the Closing Auction: Market orders (except MOC orders) and orders with a time-in-force of IOC or FOK. As described above, Market orders entered during the Regular Market Session and orders marked IOC or FOK do not rest on the Continuous Book, and therefore are not Auction Eligible Orders.

Price disseminated in IEX Auction Information leading up to the auction match), but will be ranked and eligible for execution in the Closing Auction match at the order's resting price.

Pursuant to proposed Rule 11.350(d)(1), beginning at the Closing Auction Lock-in Time (*i.e.,* 3:50 p.m., or 10 minutes prior to the end of the Regular Market Session on days that IEX is subject to an early closing), the Closing Auction will be subject to certain ''lock-in'' and ''lock-out'' restrictions.[72] Specifically, under proposed Rule 11.350(d)(1)(B), Users may enter, cancel, or modify Auction Eligible Orders until the Closing Auction Lock-in Time, at which time orders on the Closing Auction Book can no longer be canceled or modified, except that between the Closing Auction Lock-in Time and five minutes before the Closing Auction match (*e.g.,* 3:55 p.m.), LOC and MOC orders can be canceled only if the participant requests that IEX correct a legitimate error in the order (*e.g.,* side, size, symbol, price, or duplication of an order). LOC and MOC orders cannot be canceled or modified at or after five minutes before the Closing Auction match (*e.g.,* 3:55 p.m.) for any reason.[73] After the Closing Auction Lock-in Time, the Exchange will begin to reject Hyper-aggressive Auction Orders upon entry.[74] For the Closing Auction, Hyper-aggressive Auction Orders, as proposed, include MOC orders, and LOC orders with a limit price more aggressive than the latest Opening/Closing Auction Collar calculated by the System (*i.e.,* buy orders priced above the latest upper auction collar threshold and sell orders priced below the latest lower auction collar threshold calculated by the System). LOC orders entered with a limit price that is not more aggressive than the latest Opening/Closing Auction Collar calculated by the System will continue to be accepted until the Closing Auction Lock-out Time (*i.e.,* 3:59:50 p.m., ten (10) seconds prior to the Closing Auction match).[75] As noted above in the context of the Opening Auction, the Exchange similarly believes that rejecting Hyper-aggressive Auction Orders in the Closing Auction after the Lock-in Time, while allowing LOC orders that are priced within the applicable auction collar to be entered and be eligible for execution in the Closing Auction until the Lock-out Time will allows Users to continue to express interest and offset imbalances in the minutes leading up to the auction match, while also avoiding the increase of imbalances resulting from aggressively priced orders in the Auction Book during the last ten minutes of the auction process. Instead, the Exchange is proposing to allow for price discovery to occur on the Auction Book and Continuous Book within the applicable auction collars leading up to the auction match, allowing for a convergence of the Auction Book with the Continuous Book to establish equilibrium.[76] Limit orders designated for the Regular Market Continuous Book may continue to be entered and modified or canceled at any time prior to execution. Similar to the Opening Auction, the proposed Lock-Out Time of 3:59:50 p.m., ten (10) seconds prior to the Closing Auction, is designed to provide Users an opportunity to offset any remaining imbalance during a period of relative stability (while the Auction Book is locked) by submitting limit orders on the Continuous Book.

Closing Auction Process for IEX-Listed Securities

Under proposed Rule 11.350(d)(2)(A), beginning at the Closing Auction Lock-in Time and updated every one second thereafter, the Exchange will disseminate IEX Auction Information via electronic means, as described below. The Exchange will attempt to conduct a Closing Auction for all IEX-listed securities at 4:00 p.m., or such earlier time as the Regular Market Session ends on days that IEX is subject to an early closing in accordance with the clearing price determination process, described above and set forth in proposed Rule 11.350(d)(2)(B). Auction Eligible Orders will be ranked in accordance with IEX Auction Priority, described above, and as set forth in proposed Rule 11.350(b).

For example, if the Continuous Book and Closing Auction Book were to contain the following orders:

[72] Bats implements a less restrictive cut-off time, allowing LOC and MOC orders to be submitted until 3:55 p.m., but still allowing orders eligible for continuous trading and LLOC orders to be entered until immediately before the auction match. *See* Bats Rule 11.23(C)(1)(A). Nasdaq implements an identical cut-off time (3:50 p.m.), but still allows orders eligible for continuous trading and imbalance only orders to be entered until immediately before the auction match. *See* Nasdaq Rules 4702(b)(11)–(13).

[73] *See* proposed Rule 11.350(d)(1)(C).

[74] *See* proposed Rule 11.350(d)(1)(B).

[75] NYSE applies a similar restriction for its closing auction under NYSE Rule 70.25, which states that d-Quotes may be entered, modified, and canceled *until* 10 seconds before the end of the Regular Market Session (emphasis added). The Exchange notes that as explained by a recent study on NYSE auctions conducted by Greenwich Associates, NYSE d-Quotes (which can be entered by brokers that have relationships with NYSE floor brokers, or trading algorithms that are able to enter orders directly via FIX) contribute a meaningful portion of closing auction volume, as evidenced by the significant increase and fluctuations of indicative volume taken as a percentage of realized volume in the closing auction. Specifically, NYSE's auction data feed shows a material spike in indicative volume at 3:55 p.m., when d-Quotes are first included in the NYSE auction data feed, followed by fluctuations in indicative volume as a percent of realized volume. The Exchange further notes that the proposed handling of LOO, LOC, and limit orders submitted after the Lock-in Time that are not priced beyond the Opening/Closing Auction Collars is distinguishable from NYSE d-Quotes in that d-Quotes can be entered at any price, and can be canceled. As proposed, LOO, LOC, and limit orders submitted after the Lock-in Time that are not priced beyond the Opening/Closing Auction Collars cannot be canceled. The proposed order handling and IEX Auction information dissemination is designed to reflect ''locked-in'' interest on the Auction Book, which is intended to stimulate price discovery, and reduce fluctuations indicative volume taken as a percentage of realized volume that are caused by Users canceling orders on the Auction Book. *See* Trading the Auctions, Greenwich Associates, 2017, Doc ID 16–2068 (*https://www.greenwich.com/equities/trading-auctions*).

[76] As discussed above, the Exchange notes that allowing Users to offset imbalances on the Auction Book after the Lock-in Time is designed to promote price discovery and stability, and establish equilibrium leading into the auction match because such orders are not able to be canceled or modified after entry (*i.e.,* they are locked-in), which is in direct contrast with offsetting orders on the Continuous Book that may be fleeting, because they are eligible for cancellation, modification, or execution until the auction match. Orders eligible for the Closing Auction Book that are received after the Closing Auction Lock-out Time will be rejected upon entry.

Buy Orders

Entry Time	Type	Size	Price
3:00	MOC	8000	***Market***
2:30	LOC	3000	**20.02**
3:31	DAY	4000	**19.99**
3:35	LOC	1000	**19.99**
3:59	DAY	3000	**19.98**
3:59	DAY	2000	**19.97**
3:40	LOC	4000	**19.97**
3:52	LOC	500	**19.97**
3:30	DAY	10000	**19.96**

Sell Orders

Entry Time	Type	Size	Price
2:45	MOC	5000	***Market***
3:00	LOC	3000	**19.98**
3:55	LOC	1000	**19.98**
3:59	DAY	500	**20.00**
3:35	LOC	1000	**20.00**
3:48	DAY	5000	**20.01**
3:31	GTX	3000	**20.02**
3:40	LOC	1000	**20.02**
3:30	DAY	10000	**20.04**

Shares are maximized and left unexecuted at $20.01, therefore the IEX Closing Auction would execute 11,000 shares at $20.01.

Auction Eligible Orders matched in the Closing Auction will execute in accordance with IEX Auction Priority, described above. Specifically, as set forth in proposed Rule 11.350(d)(2)(C), MOC orders have priority over all other Auction Eligible Orders, and to the extent there is executable contra side interest, such MOC orders will execute at the IEX Official Closing Price in accordance with time priority. After the execution of all MOC orders, the remaining Auction Eligible Orders (*i.e.,* LOC, as well as limit and pegged orders with a time-in-force of DAY, GTT, GTX, or SYS) with a resting price more aggressive than the IEX Official Closing Price will be executed in price-display-time priority at the IEX Official Closing Price. All remaining Auction Eligible Orders with a resting price equal to the IEX Official Closing Price shall execute in display-time priority at the IEX Official Closing Price. Upon completion of the Closing Auction for IEX-listed securities, the IEX Official Closing Price for the security will be disseminated to the Consolidated Tape along with a bulk execution. The IEX Official Closing Price will be the price of the auction. If there is insufficient crossing interest to conduct a Closing Auction, no Closing Auction will occur, and the IEX Official Closing Price will be the price of the Final Last Sale Eligible Trade.[77] In such cases, the transition to the Post-Market Session shall be conducted pursuant to proposed Rule 11.350(d)(3), described below.

Pursuant to proposed Rule 11.350(d)(2)(D), if a halt is disseminated in an IEX-listed security prior to the Closing Auction, all orders on the Auction Book will remain open. Users may resume submission of new or make modifications to existing Auction Eligible Orders for the halted security during the Order Acceptance Period. Users may cancel open Auction Eligible Orders at any time during the halt. If a halt persists through the end of Regular Market Hours, no Closing Auction will occur. All On-Open orders, On-Close orders, and pegged orders will be canceled at the conclusion of Regular Market Hours, and the Final Last Sale Eligible Trade will be the IEX Official Closing Price. However, where an IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to IEX Rule 11.280(e) would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time, On-Close orders are added to the Volatility Auction and such auction will be used to determine the IEX Official Closing Price for the subject security at the conclusion of Regular Market Hours in accordance with proposed Rule 11.350(f)(3), described below.

Closing Auction Contingency Procedures

Pursuant to proposed Rule 11.350(d)(4), when a disruption occurs that prevents the execution of the Closing Auction as set forth above, IEX proposes to apply either the Primary or Secondary Closing Auction Contingency Procedures. The proposed contingency procedures are identical to those recently proposed by Nasdaq in conjunction with NYSE and NYSE Arca, and the exclusive securities information processors for the Nasdaq UTP Plan and the Consolidated Quote/Consolidated Tape Plan (the ''SIPs''), as part of a larger industry initiative to ensure the orderly execution and dissemination of official closing prices.[78]

IEX will employ the Primary Closing Auction Contingency Procedures if at all possible, and it will employ the Secondary Closing Auction Contingency Procedures only if it determines that both the standard procedures and the Primary Closing Auction Contingency Procedures are unavailable. The determination to employ Primary or Secondary Closing Auction Contingency Procedures will be based upon all available information including the type of disruption, the system or sub-system disrupted, the availability of testing and diagnostic data, and observed Member and market impact. The determination to implement Primary or Secondary Closing Auction Contingency Procedures shall be made by the President of IEX or a senior level employee designated by the President. If such a disruption occurs, IEX shall publicly announce at the earliest possible time the initiation of Primary or Secondary Closing Auction Contingency procedures via system status alerts and email notification directories.

Primary Closing Contingency Procedures

If IEX determines to initiate the Primary Closing Auction Contingency Procedures, IEX will publicly announce that no Closing Auction will occur. The price of the Final Consolidated Last Sale Eligible Trade will be used for the IEX Official Closing Price. The IEX Official Closing Price will be published to the Consolidated Tape. IEX will execute orders on the Closing Auction Book at the IEX Official Closing Price to the extent that executable buy and sell interest exists on the Closing Auction

[77] *See* proposed Rule 11.350(a)(7).

[78] *See,* for example, Nasdaq Rule 4754(b)(8); Bats Rule 11.23(i); Arca Rule 1.1(gg).

Book. All orders on the Order Book will be canceled at the conclusion of the contingency process. IEX will report the resulting execution to the Consolidated Tape and deliver execution reports to participants. If a security's IEX Official Closing Price cannot be determined by this subsection, IEX will not publish an Official Closing Price for the security and cancel all orders on the Order Book. The Post-Market Session shall begin either as scheduled, or upon resolution of the disruption that triggered IEX to operate the Primary Contingency Procedures.

Designation of a Back-Up Exchange

When a determination to implement Secondary Closing Auction Contingency Procedures has been made by the President of IEX or a senior level employee designated by the President, IEX shall publicly announce this determination at the earliest possible time via system status alerts and email notification directories. If the Secondary Closing Auction Contingency Procedures are implemented, IEX will designate an alternate exchange to provide an official closing price for all or a subset of IEX-listed securities. The Exchange would publicly announce the exchange designated as the alternate exchange via Trader Alert, and will confirm the designated alternate exchange via system status alert and email notification directories at the time of announcing the implementation of Secondary Closing Auction Contingency Procedures.

Secondary Closing Contingency Procedures

If IEX determines to follow Secondary Closing Auction Contingency Procedures for one or more securities at or before 3:00 p.m., IEX will designate an alternate exchange to provide an official closing price for all or a subset of IEX-listed securities. IEX will cancel all open orders on the Order Book in the impacted securities to give Members the opportunity to route their orders to alternative execution venues. The IEX Official Closing Price will be the official closing price established for the security under the rules of the designated back-up exchange. If there is no official closing price in a security on the designated back-up exchange, the IEX Official Closing Price will be the volume weighted average price (''VWAP'') of the last sale eligible trades reported to the Consolidated Tape during the last five minutes of Regular Market Hours on that trading day, including any closing transactions on an exchange and any trade breaks or corrections up to the time the VWAP is processed. If there are no last sale eligible trades reported to the Consolidated Tape during the last five minutes of Regular Market Hours, the IEX Official Closing Price of such security will be the Final Consolidated Last Sale Eligible Trade for the security on that trading day. If there were no last sale eligible trades reported to the Consolidated Tape on that trading day, the IEX Official Closing Price will be the previous official closing price. The IEX Official Closing Price will be published to the Consolidated Tape. If a security's IEX Official Closing Price cannot be determined under this subsection, IEX will not publish an IEX Official Closing Price for the security, and the Post-Market Session shall begin either as scheduled, or upon resolution of the disruption that triggered IEX to operate the Secondary Contingency Procedures.

If IEX determines to follow Secondary Closing Auction Contingency Procedures for one or more securities after 3:00 p.m., IEX will cancel all open orders on the Order Book in the impacted securities to give Members the opportunity to route their orders to alternative execution venues. The IEX Official Closing Price will be the VWAP of the last sale eligible trades reported to the Consolidated Tape during the last five minutes of Regular Market Hours on that trading day, including any closing transactions on an exchange and any trade breaks or corrections up to the time the VWAP is processed. If there are no last sale eligible trades reported to the Consolidated Tape during the last five minutes of Regular Market Hours, the IEX Official Closing Price of such security will be the Final Consolidated Last Sale Eligible Trade for the security on that trading day. If there were no last sale eligible trades reported to the Consolidated Tape on that trading day, the IEX Official Closing Price will be the previous official closing price. The IEX Official Closing Price will be published to the Consolidated Tape. If a security's IEX Official Closing Price cannot be determined under this subsection, IEX will not publish an IEX Official Closing Price for the security, and the Post Market Session shall begin either as scheduled, or upon resolution of the disruption that triggered IEX to operate the Secondary Contingency Procedures.

Transition to the Post-Market Session

Pursuant to proposed Rule 11.350(d)(3), LOC, MOC, and pegged orders, as well as limit orders with a time-in-force of DAY that are not fully executed at the conclusion of the Closing Auction will be canceled immediately after the Closing Auction match. All remaining shares from Auction Eligible Orders that are not canceled by the System immediately after the Closing Auction match will be released to the Continuous Book for trading in the Post-Market Session, subject to the orders' instructions. Routable orders that are released to the Continuous Book will be routed in accordance with IEX Rule 11.230(c) (Re-Sweep Behavior), subject to the orders' instructions.

IPO and Halt Auctions

For trading in an IEX-listed security in an initial public offering (an ''IPO''), or launch of a new issue, the Exchange will conduct an IPO Auction pursuant to proposed Rule 11.350(e), as described further below. Following a trading halt in an IEX-listed security pursuant to Supplementary Material .01 to Rule 14.207 and proposed Rule 11.280(g)(1), (4), or (5), the Exchange will conduct a Halt Auction, as described below.

Order Entry and Cancellation Before an IPO/Halt Auction

As proposed in Rule 11.350(e)(1), the Exchange will allow Users to submit orders for potential participation in an IPO or Halt Auction during the Order Acceptance Period. Similar to Bats and Nasdaq, the Order Acceptance Period for an IPO Auction begins at the start of System Hours (*i.e.,* 8:00 a.m.), and five (5) minutes prior to the scheduled auction match for a Halt Auction.[79] Note, however, the Exchange will not execute any orders in the applicable security prior to the auction match. All Auction Eligible Orders associated with an IPO or Halt Auction will be queued until the applicable auction match, at which time they will be eligible to be executed in the associated auction. All orders associated with an IPO or Halt Auction must be received prior to the auction match in order to be eligible to execute in the auction. Auction Ineligible Orders with a TIF of IOC or FOK will be rejected prior to the auction match; Auction Ineligible Orders that may rest on the Order Book will be queued and maintained during the Order Acceptance Period in accordance with Rule 11.220(a)(1). Auction Eligible Orders associated with an IPO or Halt Auction may be canceled or modified at any time prior to the auction match. At the conclusion of Regular Market Hours, On-Open orders, On-Close orders, pegged orders, market orders, and limit orders with a TIF of DAY will be canceled automatically by the System. In the event the Exchange cannot

[79] *See* Bats Rule 11.23(d)(1)(A); Nasdaq Rules 4120(c)(7)(A) and 4120(c)(8)(A). Note, Nasdaq permits Users to submit orders beginning at 4:00 a.m., the start of Nasdaq System Hours.

complete an IPO or Halt Auction before the end of Post-Market Hours (*i.e.,* 5:00 p.m.), all open orders in the subject security on the Order Book will be canceled.[80]

For an IPO Auction, Auction Eligible Orders, as proposed, would include MOO, LOO, and market orders with a time-in-force of DAY, as well as limit orders with a time-in-force of DAY, GTX, GTT, SYS, FOK, or IOC.[81] For a Halt Auction, pursuant to proposed Rule 11.350(a)(1)(D), Auction Eligible Orders would include:

- On-Open orders queued prior to Regular Market Hours if a Pre-Market Session halt persists through the start of Regular Market Hours and the Halt Auction is scheduled to occur during the Regular Market Session;
- Limit orders with a TIF of GTT, SYS, FOK, or IOC received during the Order Acceptance Period;
- Limit orders with a TIF of DAY received during the Order Acceptance Period within the Regular Market Session or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day;
- Limit orders with a TIF of GTX received during the Order Acceptance Period within the Regular Market Session or Post-Market Session or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day;
- Market orders with a TIF of FOK or IOC received during the Order Acceptance Period within the Regular Market Session;
- Market orders with a TIF of DAY received during the Order Acceptance Period within the Regular Market Session or queued prior to the Regular Market Session for securities that have not traded during the Regular Market Session on that trading day; and
- Displayed portions of limit orders on the Continuous Book at the time of the halt dissemination.

IPO and Halt Auctions are not subject to ''lock-in'' or ''lock-out'' restrictions. Pegged orders and non-displayed orders on the Continuous Book at the time of the halt dissemination will not be eligible to execute in the Halt Auction. Pegged orders submitted during the Order Acceptance Period will not be eligible to execute in the IPO or Halt Auction.

IPO and Halt Auction Process for IEX-Listed Securities

Pursuant to proposed Rule 11.350(e)(2)(A), at the beginning of the Display Only Period (*i.e.,* thirty minutes prior to the scheduled auction match for an IPO Auction, and the start of the Order Acceptance Period for a Halt Auction), and updated every one second thereafter until the IPO or Halt Auction match, the Exchange will disseminate IEX Auction Information via electronic means, as described below.

The Order Acceptance Period may be extended at the time of the auction match pursuant to proposed Rule 11.350(e)(2)(B)(i)–(iii) automatically for five (5) minutes in an IPO Auction when there are unmatched shares from market orders on the IPO Auction Book, or when the Indicative Clearing Price at the auction match differs by the greater of five percent (5%) or fifty cents ($0.50) from any of the previous fifteen (15) Indicative Clearing Price disseminations, automatically during the Pre-Launch Period when the clearing price is above (below) the upper (lower) price band selected by the underwriter pursuant to proposed Rule 11.280(h)(8), until the clearing price is within such bands, or a manual extension may be implemented upon request from the underwriter at any time prior to the auction match. For a Halt Auction, pursuant to Rule 11.350(e)(2)(B)(i)–(ii), the Order Acceptance Period may be extended automatically for one (1) minute when there are unmatched shares from market orders on the Halt Auction Book, or when the Indicative Clearing Price at the auction match differs by the greater of five percent (5%) or fifty cents ($0.50) from any of the previous fifteen (15) Indicative Clearing Price disseminations.

The Exchange will generally attempt to conduct an auction for corporate IPOs beginning at 10:15 a.m., or 9:30 a.m. for new issues, in accordance with the clearing price determination process, described above and as set forth in proposed Rule 11.350(e)(2)(C). Auction Eligible Orders will be ranked in accordance with IEX Auction Priority, described above and as set forth in proposed Rule 11.350(b). Auction Eligible Orders are used to calculate the auction match price. Auction Eligible Orders matched in the IPO or Halt Auction will execute in accordance with IEX Auction Priority, described above. Specifically, as set forth in proposed Rule 11.350(e)(2)(D), market and MOO orders have priority over all other Auction Eligible Orders, and to the extent there is executable contra side interest, such market and MOO orders will execute at the IEX Official IPO Price or the price of the IEX Re-Opening Trade in accordance with time priority. After the execution of all market and MOO orders, the remaining Auction Eligible Orders with a resting price more aggressive than the IEX Official IPO Price or the price of the IEX Re-Opening Trade will be executed in price-display-time priority at the IEX Official IPO Price, or the price of the IEX Re-Opening Trade. All remaining Auction Eligible Orders with a resting price equal to the IEX Official IPO Price or the price of the IEX Re-Opening Trade execute in display-time priority at the IEX Official IPO Price, or the price of the IEX Re-Opening Trade. Upon completion of an IPO Auction for IEX-listed securities, the IEX Official IPO Opening Price for the security will be the price of auction, and shall be disseminated to the Consolidated Tape along with a bulk execution. Upon completion of a Halt Auction for IEX-listed securities, the IEX Re-Opening Trade for the security will be the execution that resulted from the Halt Auction. If a security does not have a Halt Auction (*e.g.,* there is insufficient crossing interest to conduct a Halt Auction), no Halt Auction will occur, and the transition to continuous trading shall be conducted pursuant to proposed Rule 11.350(e)(3), described below.

If IEX has not determined the IEX Official Opening Price for an IEX-listed security, and the Halt Auction is scheduled to occur during the Regular Market Session, the IEX Official Opening Price will be the price of the Halt Auction pursuant to proposed Rule 11.350(c)(2)(D) or (E), as applicable. If there is insufficient crossing interest to complete the Halt Auction, the transition to the Regular Market Session shall be conducted pursuant to proposed Rule 11.350(e)(3), described below, no auction will occur, and the IEX Official Opening Price will be the Initial Last Sale Eligible Trade.[82] If a security remains halted at the end of Regular Market Hours, no Closing Auction will occur, and all On-Open orders, On-Close orders, pegged orders, market orders, and limit orders with a time-in-force of DAY will be canceled at

[80] The Order Acceptance Period extensions proposed by the Exchange are substantially similar to the criteria set forth in Bats Rule 11.23(d)(2)(B) regarding the extension of the Bats Quote-Only Period.

[81] Note, limit orders with a time-in-force of IOC or FOK will be executed in the same manner as LOO orders and market orders with a time-in-force of DAY, FOK, or IOC will be executed in the same manner as MOO orders in the IPO Auction, and all unexecuted shares will be canceled immediately following the auction match.

[82] *See* proposed Rule 11.350(a)(16).

the conclusion of Regular Market Hours.[83]

Contingency Procedures

When a disruption occurs that prevents the execution of an IPO or Halt Auction as set forth above, IEX shall apply the IPO or Halt Auction Contingency Procedures as set forth in proposed Rule 11.350(e)(4). Specifically, for an IPO Auction, IEX will publicly announce that the Order Acceptance Period will be reset for the subject security, at which point IEX will cancel all orders on the Order Book, and shall disseminate a new scheduled time for the Order Acceptance Period and auction match. For a Halt Auction, IEX will publicly announce that no Halt Auction will occur. All orders on the Order Book will be canceled, and IEX will open the security for trading without an auction.

Transition to Continuous Trading

Under proposed Rule 11.350(e)(3), LOO, MOO, and market orders, as well as Auction Eligible Orders with a TIF of FOK or IOC that are not fully executed at the conclusion of the IPO Auction will be canceled immediately after the IPO Auction match. Auction Eligible Orders with a time-in-force of FOK or IOC and market orders (as well as On-Open orders when the Halt Auction is determining the IEX Official Opening Price) that are not fully executed at the conclusion of the Halt Auction will be canceled immediately after the Halt Auction match. All remaining shares from Auction Eligible Orders that are not canceled by the System immediately after an IPO or Halt Auction match and Auction Ineligible Orders will be released to the Continuous Book for execution in the Pre-Market, Regular Market, or Post-Market Session, as applicable, subject to the orders instructions. Routable orders that are released to the Continuous Book will be routed in accordance with IEX Rule 11.230(c) (Re-Sweep Behavior), subject to the orders instructions.

Volatility Auction

IEX will conduct a Volatility Auction pursuant to proposed Rule 11.350(f) to re-open an IEX-listed security after such security is subject to an LULD trading pause pursuant to IEX Rule 11.280(e). Furthermore, as described below, IEX will close IEX-listed securities using a Volatility Auction under proposed Rule 11.350(f)(3) when an IEX-listed security is subject to an LULD trading pause at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to the LULD Plan would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time. As noted above in the description of the proposed Volatility Auction Collars, the proposed Volatility Auction functionality is substantially similar to the functionality proposed by Bats, Nasdaq, and NYSE Arca for conducting an auction to resume a security subject to an LULD trading pause. Furthermore, the proposed Volatility Auction functionality is consistent with the commitment made by each primary listing exchange set forth in Amendment 12 to the Limit Up-Limit Down Plan to file rule changes with the Commission under Section 19(b) of the Exchange Act to amend its respective trading practice for automated reopening's following a trading pause consistent with a standardized approach agreed to by Limit Up-Limit Down Plan Participants that would allow for extensions of an LULD trading pause if equilibrium cannot be met for a reopening price within specified parameters.[84]

Order Entry and Cancellation for a Volatility Auction

As set forth in proposed Rule 11.350(f)(1), the Exchange will allow Users to submit orders for potential participation in a Volatility Auction during the Order Acceptance Period, which is generally five (5) minutes, and begins immediately after the pause dissemination. However, when an IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time, or if the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to IEX Rule 11.280(e) would be in effect at the Closing Auction Lock-in Time, the Order Acceptance Period shall continue to the end of the Regular Market Session.[85]

The Exchange will not execute any orders in the applicable security prior to the auction match. Auction Eligible Orders submitted during the Order Acceptance Period will join the Volatility Auction Book and be queued until the Volatility Auction match. All orders associated with a Volatility Auction must be received prior to the auction match in order to be eligible for execution in the auction. Auction Ineligible Orders with a TIF of IOC or FOK will be rejected prior to the auction match; Auction Ineligible Orders that may rest on the Order Book will be queued and maintained during the Order Acceptance Period in accordance with Rule 11.220(a)(1). Auction Eligible Orders associated with a Volatility Auction may be canceled or modified at any time prior to the auction match.[86] Auction Eligible Orders, as proposed, include the following.[87]

- Limit orders with a TIF of GTX, GTT, SYS, FOK, or IOC received during the Order Acceptance Period;
- Limit orders with a TIF of DAY received during the Order Acceptance Period within Regular Market Hours;
- Market orders with a TIF of FOK, IOC, or DAY received during the Order Acceptance Period within Regular Market Hours; and
- Displayed portions of limit orders on the Continuous Book at the time of the pause dissemination.

Auction Eligible Orders associated with a Volatility Auction may be canceled or modified at any time prior to execution. Volatility Auctions are not subject to ''lock-in'' or ''lock-out'' restrictions. Pegged orders and non-displayed orders on the Continuous Book at the time of the pause dissemination will not be eligible for execution in the Volatility Auction. Pegged orders submitted during the Order Acceptance Period will not be eligible for execution in the Volatility Auction.

Volatility Auction Process for IEX-Listed Securities

Pursuant to proposed Rule 11.350(f)(2)(A), at the beginning of the Display Only Period (*i.e.,* the start of the Order Acceptance Period), and updated

[83] *See* proposed Rule 11.350(d)(2)(D). Note, in the event the Exchange cannot complete a Halt Auction before the end of Post-Market Hours (*i.e.,* 5:00 p.m.), all open orders in the subject security on the Order Book will be canceled pursuant to proposed Rule 11.350(e)(1)(D).

[84] *See* Securities Exchange Act Release Nos. 79162 (October 26, 2016), 81 FR 75875 (November 1, 2016) (SR–BatsBZX–2016–61); 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR–NASDAQ–2016–131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (File No. SR–NYSEArca–2016–130) and Securities and Exchange Act Release No. 34–79410; File No. 4–631 (Notice of Filing of the Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

[85] *See* proposed Rule 11.350(f)(1)(A).

[86] *See* proposed Rule 11.350(f)(1)(B)–(C).

[87] *See* proposed Rules 11.350(a)(1) and 11.350(a)(2). Note, when an IEX-listed security is paused at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time, *i.e.,* when a Volatility Auction is determining the IEX Official Closing Price pursuant to proposed Rule 11.350(f)(3), the Auction Eligible Orders for the Volatility Auction include MOC and LOC orders.

every one second thereafter, the Exchange will disseminate IEX Auction Information via electronic means, as described below.

Pursuant to proposed Rule 11.350(a)(29)(C), the Order Acceptance Period for a Volatility Auction shall commence immediately after a trading pause dissemination. Under proposed Rules 11.350(f)(2)(C)(i)–(ii), the conditions in which the Order Acceptance Period may be extended automatically for five (5) minutes pursuant to Rule 11.350(f)(2)(D)(ii) at the time of the Volatility Auction match include when: (i) There are unmatched shares from market orders on the Volatility Auction Book, or when the Indicative Clearing Price is higher (lower) than the upper (lower) threshold of the Volatility Auction Collar (in either case, an ''Impermissible Price''); or (ii) when the Indicative Clearing Price differs by the greater of five percent (5%) or fifty cents ($0.50) from any of the previous fifteen (15) Indicative Clearing Price disseminations. In addition, under proposed Rule 11.350(f)(2)(C)(iii), the Order Acceptance Period will be extended automatically to the end of the Regular Market Session where an IEX-listed security is paused at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time would otherwise be in effect at the Closing Auction Lock-in Time, in which case the IEX Official Closing Price will be determined by the Volatility Auction pursuant to proposed Rule 11.350(f)(3).

Under proposed Rule 11.350(f)(2)(D)(ii), the Order Acceptance Period may be extended for five (5) minutes under proposed rule 11.350(f)(2)(C)(i) or (C)(ii) described above (the ''Initial Extension Period''). After the Initial Extension Period, the Order Acceptance Period may be extended for additional five (5) minute periods pursuant to proposed Rule 11.350(f)(2)(C)(i) or (C)(ii) described above (each an ''Additional Extension Period'') until a Volatility Auction occurs. The Exchange shall attempt to conduct a Volatility Auction every one second during the course of each Additional Extension Period. Should the Order Acceptance Period for a Volatility Auction be extended to a time past the Closing Auction Lock-in Time (*i.e.,* ten (10) minutes prior to the end of the Regular Market Session), the Volatility Auction shall be conducted pursuant to proposed Rule 11.350(f)(3), described below. At the beginning of the Order Acceptance Period, the Volatility Auction Collar Reference Price and the Volatility Auction Collar shall be determined in accordance with proposed Rules 11.350(a)(32) and 11.350(a)(31), respectively.[88] At the beginning of the Initial Extension Period the upper (lower) Volatility Auction Collar shall be increased (decreased) by five (5) percent in the direction of the Impermissible Price, rounded to the nearest passive MPV. For securities with a Volatility Auction Collar Reference Price of $3.00 or less, the Volatility Auction Collar shall be increased (decreased) in $0.15 increments in the direction of the Impermissible Price, rounded to the nearest passive MPV. At the beginning of each Additional Extension Period pursuant to proposed Rule 11.350(f)(2)(C)(ii), the Volatility Auction Collar shall be widened as described in this paragraph, in the same manner as the Initial Extension Period.

The Exchange will attempt to conduct a Volatility Auction for all IEX-listed securities to resume trading following an LULD trading pause, in accordance with the clearing price determination process described above and set forth in proposed Rule 11.350(f)(2)(E). If the Volatility Auction price established by subparagraphs (i) through (iii) is outside the Volatility Auction Collar, the Order Acceptance Period shall be extended pursuant to 11.350(f)(2)(C)(ii) and the Volatility Auction Collars shall be updated pursuant to Rule 11.350(f)(2)(D)(ii). If the Volatility Auction price established by subparagraphs (i) through (iii) meets the conditions for extending the Order Acceptance Period described in Rule 11.350(f)(2)(C)(i), the Order Acceptance Period shall be extended pursuant to 11.350(f)(2)(C)(i).

Auction Eligible Orders matched in the Volatility Auction will execute in accordance with IEX Auction Priority, described above. Specifically, as set forth in proposed Rule 11.350(f)(2)(F), market orders have priority over all other Auction Eligible Orders, and to the extent there is executable contra side interest, such market orders will execute at the price of the IEX Re-Opening in accordance with time priority. After the execution of all market orders, the remaining Auction Eligible Orders with a resting price more aggressive than the price of the IEX Re-Opening will be executed in price-display-time priority at the price of the IEX Re-Opening Trade. All remaining Auction Eligible Orders with a resting price equal to the price of the IEX Re-Opening Trade execute in display-time priority at the price of the IEX Re-Opening Trade. Upon completion of a Volatility Auction, the IEX Re-opening Trade for the security will be the execution that resulted from the Volatility Auction. If a security does not have a Volatility Auction (*e.g.,* there is insufficient crossing interest to conduct a Volatility Auction), the transition to continuous trading shall be conducted pursuant to proposed Rule 11.350(f)(2)(G), described below, and no Volatility Auction will occur. Pursuant to Rule 11.350(c)(2)(F), if IEX has not determined the IEX Official Opening Price for an IEX-listed security, and the security is subject to an LULD trading pause, the IEX Official Opening Price will be the price of the Volatility Auction.

Volatility Auction Contingency Procedures

When a disruption occurs that prevents the execution of a Volatility Auction as set forth above, IEX shall apply the Volatility Auction Contingency Procedures set forth in proposed Rule 11.350(f)(2)(H). Specifically, IEX will publicly announce that no Volatility Auction will occur, and the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security. All orders on the Order Book will be canceled, and IEX will open the security for trading without an auction after the single plan processor responsible for consolidation of information for the security has disseminated Price Bands.

Transition to Continuous Trading

Pursuant to proposed Rule 11.350(f)(2)(G), Auction Eligible Orders with a TIF of FOK or IOC and market orders that are not fully executed in a Volatility Auction will be canceled immediately after the Volatility Auction match. All remaining shares from Auction Eligible Orders and Auction Ineligible Orders that are not canceled by the System immediately after a Volatility Auction match will be released to the Continuous Book for trading in the Regular Market Session, subject to the orders' instructions. Routable orders that are released to the Continuous Book will be routed in accordance with IEX Rule 11.230(c) (Re-Sweep Behavior), subject to the orders' instructions.

Closing With a Volatility Auction

Where an IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to IEX Rule 11.280(e)

[88] *See* proposed Rule 11.350(f)(2)(D)(i).

would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time, no Closing Auction for the security will occur. Instead, the Exchange will conduct a Volatility Auction at the end of Regular Market Hours to determine the IEX Official Closing Price for the security pursuant to proposed Rule 11.350(f)(3).

Order Entry and Cancellation Before Closing With a Volatility Auction

Pursuant to proposed Rule 11.350(f)(3)(A), Auction Eligible Orders may be submitted to the Exchange at the beginning of the Order Acceptance Period for participation in a Volatility Auction. All Auction Eligible Orders will be queued until the auction match. All orders associated with a Volatility Auction must be received prior to the auction match in order to be eligible for execution in the Volatility Auction. Auction Ineligible Orders will be rejected prior to the auction match. MOC and LOC orders queued for the Closing Auction will be incorporated into the Auction Book for the Volatility Auction. When an IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time, or the Order Acceptance Period of a Volatility Auction for a security paused before the Closing Auction Lock-in Time pursuant to IEX Rule 11.280(e) would otherwise be extended by the Exchange to a time after the Closing Auction Lock-in Time, non-displayed interest with a TIF of DAY and pegged orders will be immediately canceled, in order to allow Users to re-enter such interest as Auction Eligible Orders. Auction Eligible Orders associated with a Volatility Auction may be canceled or modified at any time prior to the auction match. In the event the Exchange cannot complete a Volatility Auction before the end of Post-Market Hours (*i.e.,* 5:00 p.m.), all open orders in the subject security on the Order Book will be canceled.[89]

Process for Closing With a Volatility Auction

Under proposed Rule 11.350(f)(3)(B)(i), at the start of the Display Only Period and updated every one second thereafter, IEX Auction Information associated with the Volatility Auction will be disseminated via electronic means. The Exchange shall execute the Volatility Auction to determine the IEX Official Closing Price of a security in accordance with the clearing price determination process described above and set forth in proposed Rule 11.350(f)(3)(B)(ii). If the Volatility Auction price established by proposed Rule 11.350(f)(3)(B)(ii) is outside the Volatility Auction Collar, the Order Acceptance Period shall be extended pursuant to 11.350(f)(2)(C)(ii) and the Volatility Auction Collars shall be updated pursuant to Rule 11.350(f)(2)(D)(ii), described above. If the Volatility Auction match price meets the conditions for extending the Order Acceptance Period described in Rule 11.350(f)(2)(C)(i), the Order Acceptance Period shall be extended pursuant to 11.350(f)(2)(C)(i).

Auction Eligible Orders matched in the Volatility Auction will execute in accordance with IEX Auction Priority, described above. Specifically, as set forth in proposed Rule 11.350(f)(3)(B)(iii), market and MOC orders have priority over all other Auction Eligible Orders in the Volatility Auction. To the extent there is executable contra side interest, such market and MOC orders will be executed at the IEX Official Closing Price according to time priority. After the execution of all market and MOC orders, the remaining Auction Eligible Orders with a resting price more aggressive than the IEX Official Closing Price will be executed in price-display-time priority at the IEX Official Closing Price. All remaining Auction Eligible Orders with a resting price equal to the IEX Official Closing Price shall execute in display-time priority at the IEX Official Closing Price. All AGID modifiers as defined in Rule 11.190(e), and Minimum Quantity instructions as defined in Rule 11.190(b)(11), will not be supported in the Volatility Auction, but will be enforced on all unexecuted shares released to the Continuous Book following the Volatility Auction match. The IEX Official Closing Price will be the price of the Volatility Auction. If there is insufficient trading interest (*i.e.,* no crossing interest) in the System to execute the Volatility Auction for that security, the Final Last Sale Eligible Trade shall be used as the IEX Official Closing Price in that security, and the security will be released for trading pursuant to proposed Rule 11.350(f)(3)(C), described below. Pursuant to Rule 11.350(c)(2)(F), if IEX has not determined the IEX Official Opening Price for an IEX-listed security, and the security is subject to an LULD trading pause, the IEX Official Opening Price will be the price of the Volatility Auction.

Contingency Procedures for Closing With a Volatility Auction

Under proposed Rule 11.350(f)(3)(D), when a disruption occurs that prevents the execution of the Volatility Auction as set forth above, IEX will utilize the Closing Auction Contingency Procedures as defined in proposed Rule 11.350(d)(4).

Transition to Post-Market Session

Pursuant to proposed Rule 11.350(f)(3)(C), LOC, MOC, and market orders, as well as all orders with a TIF of DAY, FOK, or IOC that are not fully executed at the conclusion of the Volatility Auction will be canceled immediately after the Volatility Auction match. All remaining shares from Auction Eligible Orders that are not canceled immediately by the System after the Volatility Auction match will be released to the Continuous Book for trading in the Post-Market Session, subject to the orders' instructions. Routable orders that are released to the Continuous Book will be routed in accordance with IEX Rule 11.230(c) (Re-Sweep Behavior), subject to the orders' instructions.

Short Sale Order Handling

For Opening, Closing, Halt, and Volatility Auctions for covered securities, when the Short Sale Price Test of Rule 201 of Regulation SHO is in effect, the Exchange will not execute or display short sale orders not marked short exempt at a price at or below the current NBB.[90] Specifically, when the Short Sale Price Test of Rule 201 of Regulation SHO is in effect during the auction match for covered securities, and the inclusion of one or more sell short orders not marked short exempt would push the auction match price to a price at or below the current NBB at the time of the auction match (*i.e.,* the time of execution of orders in the auction), then such short sale orders not marked short exempt and all other short sale orders not marked short exempt with lesser priority shall not receive an execution in the auction match.

In addition, the Exchange notes that short sale orders not marked short exempt for a covered security subject to the Short Sale Price Test of Rule 201 of Regulation SHO submitted to the Continuous Book are subject to Rule 11.190(h)(4) (Short Sale Price Sliding), and will therefore not be displayed at a price at or below the current NBB. Furthermore, short sale orders submitted to the Auction Book that are not marked short exempt for a covered security subject to the Short Sale Price Test of Rule 201 of Regulation SHO submitted to the Auction Book are not displayed, and therefore will not be displayed at a price at or below the current NBB. In the case of an IPO

[89] *See* proposed Rule 11.350(f)(3)(A)(v).

[90] *See* Rule 201(b)(1) of Regulation SHO.

Auction, the security will never be subject to the Short Sale Price Test of Rule 201 of Regulation SHO since there will have been no prior trading.[91]

Accordingly, when the Short Sale Price Test of Rule 201 of Regulation SHO is in effect during an auction for a covered security, a short sale Auction Eligible Order not marked short exempt with a resting (as defined in proposed Rule 11.350(b)(1)(A)(i)) price at or below the auction match price will not participate (in whole or in part) in the clearing price determination or receive an execution (in whole or in part) in the auction match (despite such orders marketability against the auction match price) if the short sale order's participation in the clearing price determination of the auction would push the auction match price to a price at or below the current NBB price. The following describes the execution priority for auctions in a security when the Short Sale Price Test pursuant to Rule 201 of Regulation SHO is in effect:

- Auction Eligible Order that are market orders, including MOO and MOC orders, to buy, sell long, or sell short that do not push the auction match price to a price at or below the current NBB, will execute in time priority.
- All other Auction Eligible Orders priced more aggressively than the auction match price to buy, sell long, or sell short that do not push the auction match price to a price at or below the current NBB, will execute in price-display-time priority.
- All other Auction Eligible Orders priced equal to the auction match price to buy, sell long, or sell short that do not push the auction match price to a price at or below the current NBB, will execute in display-time priority.

Proposed Rule 11.350(h) states that whenever in the judgment of the Exchange, the interests of a fair and orderly markets so require, the Exchange may adjust the timing of or suspend the auctions set forth in this IEX Rule with prior notice to Users. The Exchange believes that reserving qualified discretion to adjust the timing or suspend IEX Auctions in the interest of fair and orderly markets is inherently consistent with the protection of investors and the public interest. The Exchange believes that this discretion is necessary to give the Exchange latitude to adapt to quickly changing, volatile market conditions that may negatively impact market participants. The Exchange further notes that Bats Rule 11.23(f) reserves identical discretion, stating ''[w]henever, in the judgment of [Bats], the interests of a fair and orderly market so require, the Exchange may adjust the timing of or suspend the auctions set forth in this Rule with prior notice to Users''.

Proposed Rule 11.350(i) states that for purposes of Rule 611(b)(3) of Regulation NMS and section VI(D)(6) of the plan to Implement a Tick Size Pilot Program, orders executed pursuant to the Opening Auction, Closing Auction, IPO Auction, Halt Auction, and Volatility Auction may trade-through or trade-at the price of any other Trading Center's Manual or Protected Quotations if the transaction that traded-at or constituted the trade-through was a single-priced opening, re-opening, or closing transaction by the trading center. Each of the orders executed pursuant to the Opening Auction, Closing Auction, IPO Auction, Halt Auction, and Volatility Auction are by definition a single priced opening, re-opening, or closing transactions, and therefore meet the letter and spirit of Rule 611(B)(3) of Regulation NMS and section VI(D)(6) of the plan to Implement a Tick Size Pilot Program, and are consistent with the protection of investors and the public interest.

IEX Auction Information

In addition to the amendments to IEX Rule 11.350 to govern Exchange Auctions, the Exchange proposes to amend IEX Rule 11.330 to describe the addition of IEX Auction Information to recipients of the IEX Top of Book Quote and Last Sale feed (''TOPS''), the IEX Depth of Book and Last Sale feed (''DEEP''), as well as the IEX Data Platform, which is available on the Exchange's public Web site. TOPS, DEEP, and the IEX Data Platform is available to Exchange data recipients [92] free of charge.

As defined in proposed Rule 11.350(a)(9), IEX Auction Information contains the current status of price, size, imbalance information, auction collar information, and other relevant information related to auctions conducted by the Exchange, described below.[93] IEX intends to disseminate substantially the same information through the Consolidated Quotation System operated by the Consolidated Tape Association (''CTA'') SIP, pending approval by the Operating Committee of the CTA. Following such approval, IEX will amend Rule 11.330 to reflect this additional means of dissemination.

IEX Auction Information as proposed is substantially similar to the Bats Auction Feed, and the Nasdaq Net Imbalance Order Indicator (NOII).[94] However, consistent with the commitment made by each primary listing exchange set forth in Amendment 12 to the Limit Up-Limit Down Plan, the Exchange is proposing to include the applicable auction collar values and the reference price from which the collar is derived, the scheduled time of the auction, and the number of auction extensions, if any. Furthermore, the Exchange will disseminate IEX Auction Information every one second, which is a more frequent interval than auction information is disseminated by Bats and Nasdaq, but less frequent than NYSE Arca.[95] IEX Auction Information will contain the following data elements:

- *Reference Price:* The single price at or within the Reference Price Range at which orders on the Auction Book would match if the IEX Auction were to occur at that time of dissemination. The Reference Price is set to the price that maximizes the number of the shares from orders on the Auction Book to be executed in the auction. If more than one price maximizes the number of shares that will execute, the Reference Price is set to the entered price at which shares will remain unexecuted in the

[91] Note, IPO Auctions are used to open securities that are the subject of a new security offering pursuant to Section 6 of the Securities Act of 1933 on the first day of trading on the Exchange. Pursuant to question 3.2 of the Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, on the first day of trading of a covered security on any listing market, pursuant to a new security offering, there will not be a closing price for the covered security for the prior day. Thus, Rule 201 will not apply to such covered securities until the second day of trading.

[92] Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data.

[93] The Exchange does not charge fees for any of its data feeds or for ports used for receipt of data from the Exchange.

[94] *See* Bats Rule 11.22(i), as well as the Bats Auction Feed Specification. See also Nasdaq Rules 4752(a)(2), 4753(a)(3), and 4754(a)(7), as well as the Nasdaq Net Order Imbalance Indicator User Guide.

[95] *See* Bats Rules 11.23(b)(2)(A), 11.23(c)(2)(A), 11.23(d)(2)(A), and 11.23(e)(2)(A), which state that Bats auction information will be disseminated in 5 second intervals; *See* Nasdaq Rule 4752(d)(1), which states that an Order Imbalance Indicator shall be disseminated every five seconds between 9:28 a.m. and the Nasdaq Opening Cross, Nasdaq Rule 4754(b)(1), which states that an Order Imbalance Indicator shall be disseminated every five seconds between 3:50 p.m. and the Nasdaq Closing Cross, and Nasdaq Rule 4753(b)(1), which states that an Order Imbalance Indicator shall be disseminated every five seconds at the beginning the Display Only Period for a Nasdaq Halt Cross and continuing through the resumption of trading; *See* Arca Rule 7.35(a)(4)(A), which states that Auction Imbalance Information is updated at least every second, unless there is no change to the information, as well as the XDP Integrated Feed Client Specification version 1.16b, Section 13.2 at 27, which states that Auction Imbalance Information is published in real time.

auction (*i.e.,* the price of the most aggressive unexecuted order). If more than one price satisfies the above conditions (*i.e.,* shares are maximized at each price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order, resulting in an ''auction price range''), the Reference Price is set to the price within the auction price range that minimizes the distance from either the Volume Based Tie Breaker (if the auction price range includes prices in the Reference Price Range) or the Reference Price Range (if the auction price range does not include prices in the Reference Price Range) at the time of dissemination. In the case of an IPO or Halt Auction, the Reference Price shall be the same as the Auction Book Clearing Price.

- *Paired Shares:* The number of shares from orders on the Auction Book that can be matched with other orders on the Auction Book at the Reference Price at the time of dissemination.
- *Imbalance Shares:* The number of shares from orders on the Auction Book that may not be matched with other orders on the Auction Book at the Reference Price at the time of dissemination.
- *Imbalance Side:* The buy/sell direction of any imbalance at the time of dissemination.
- *Indicative Clearing Price:* The single price at or within the Opening/Closing Auction Collar at which Auction Eligible Orders would match if the IEX Auction were to occur at the time of dissemination pursuant to the procedures for determining the clearing price set forth in the applicable auction rule. In the case of an IPO, Halt, or Volatility Auction, the Indicative Clearing Price shall be the same as the Auction Book Clearing Price.
- *Auction Book Clearing Price:* The single price at which orders on the Auction Book would match if the IEX Auction were to occur at the time of dissemination pursuant to the procedures for determining the clearing price set forth in the applicable auction rule, but shall not be constrained by the Opening/Closing Auction Collar, as applicable. If shares from market orders would remain unexecuted, IEX shall disseminate an indicator for ''market buy'' or ''market sell.''
- *Collar Reference Price:* Opening/Closing Auction Collar Reference Price for the Opening and Closing Auctions. Volatility Auction Collar Reference Price for the Volatility Auction.
- *Lower Auction Collar:* The lower threshold of the Opening/Closing Auction Collar for the Opening and Closing Auctions. The lower threshold of the Volatility Auction Collar for the Volatility Auction.
- *Upper Auction Collar:* The upper threshold of the Opening/Closing Auction Collar for the Opening and Closing Auctions. The upper threshold of the Volatility Auction Collar for the Volatility Auction.
- *Scheduled Auction Time:* The projected time of the auction match.
- *Extension Number:* The total number of automatic Order Acceptance Period extensions an IPO, Halt, or Volatility Auction has received.

Note that the Reference Price, Indicative Clearing Price, and Auction Book Clearing Price will show the same value during an IPO or Halt Auction since there is no Continuous Book and no applicable auction collar. In addition, if there is a market order imbalance in an IPO or Halt Auction, the Reference Price, Indicative Clearing Price, and Auction Book Clearing Price will all have a value of zero, indicating that an auction match price cannot be calculated, the Imbalance Side will indicate the side of the market order imbalance, and the Imbalance Shares will indicate the size of the market order imbalance. Lastly, if there is a market order imbalance in an Opening or Closing Auction, the Auction Book Clearing Price will all have a value of zero. IEX Auction Information will be disseminated every one second between the Lock-in Time and the auction match for Opening and Closing Auctions, and during the Display Only Period for IPO, Halt, and Volatility Auctions.

The fields proposed for dissemination in IEX Auction Information are strategically tailored to the IEX Auction model, and were developed after informal discussion with various Members, as well as reference to existing fields offered in auction data provided by other exchanges, including the Nasdaq NOII, and the Bats Auction Feed. Specifically, the Indicative Clearing Price and Auction Book Clearing Price are substantially similar to the Nasdaq ''Near Clearing Price'' and ''Far Clearing Price'' as well as the Bats ''Indicative Price'' and ''Auction Only Price'', and should therefore be familiar to Members that trade in the Nasdaq and Bats auctions.[96] Similarly, the proposed Reference Price field is substantially similar to the Reference Price utilized by Bats, and Nasdaq.[97]

Moreover, as proposed, the Exchange will utilize orders on the Auction Book to calculate the Paired Shares, Imbalance Shares, and Imbalance Side fields included in IEX Auction Information (*i.e.,* both displayed and non-displayed orders on the Continuous Book are not accounted for when determining the number of shares that can be matched or remain unexecuted at the current Reference Price). The proposed Paired Shares, Imbalance Shares, and Imbalance Side fields are designed to enhance the reliability of the fields disseminated in IEX Auction Information, and mitigate potential gaming scenarios that could negatively impact Users trading in IEX Auctions.

Specifically, the fields as proposed are designed to avoid disseminating Paired Shares and Imbalance Shares based on orders on the Continuous Book that may be fleeting. Orders on the Continuous Book are not subject to lock-in or lock-out restrictions, and may therefore be canceled or executed at any time before the auction match. Including potentially fleeting orders in the Paired Shares and Imbalance Shares fields could have negative implications for price discovery leading up to the auction match by discouraging Users from offsetting Imbalance Shares, leaving unmatched shares on the Auction Book at the time of the match when Continuous Book orders that were ostensibly offsetting the Imbalance Shares (and contributing to Paired Shares) are canceled or executed prior to the auction.

Furthermore, as proposed, the Paired Shares field is designed to allow Users to determine the likelihood of their Eligible Auction Orders being executed in the auction. Specifically, because Paired Shares only reflects orders that are locked in to the auction (and therefore will be eligible for execution only in the auction), Users can assess their chances of receiving an execution in the auction match based on the marketability of their order against the Indicative Clearing Price, and the number of Paired Shares against their order size. For example, if the final Indicative Clearing Price is $10.00, and IEX has 100,000 shares paired, a User that has a LOC order to buy 10,000 shares with a limit price of $10.50 has a high likelihood of receiving a 10,000 share execution in the Closing Auction. To continue the example and highlight the positive effects of the proposed functionality on price discovery, if the

[96] *See* the Bats US Equities Auction Process specification at 8, as well as the Nasdaq Net Order Imbalance Indicator User Guide at 4–5.

[97] *See* the Bats US Equities Auction Process specification at 7, and 5, which define the Reference Price as the price within the Reference Price Range that maximizes the number of shares to be executed, minimizes the imbalance, and minimizes the distance to the Volume Based Tie Breaker. See also *e.g.,* Nasdaq Rule 4754(a)(7)(A), which defines the Current Reference Price for the Nasdaq closing cross.

Indicative Clearing Price were to have moved away from the participant (to $10.50, for example), such User's chances of receiving an execution in the auction are diminished because the auction match price has moved to the order's limit price, and such order is ''locked-in'' (*i.e.,* ineligible for modification or cancelation). Accordingly, Users are incentivized to express their full limit on Auction Eligible Orders in order to increase the likelihood of receiving an execution in the Opening or Closing Auction at a price they believe reflects the fundamental value of the security. This truthful representation of full limit prices is designed to enhance price discovery leading into the auction match.

The Exchange further notes that as proposed, the Paired Shares, Imbalance Shares, and Imbalance Side fields are substantially similar to the ''Reference Buy Shares'' and ''Reference Sell Shares'' fields currently offered by Bats on the Bats Auction Feed, which provide the number of shares associated with buy (sell) side Eligible Auction Orders (which are on the Bats auction book, as defined in Bats Rule 11.23(a)(8)) that are priced equal to or greater (less) than the Reference Price. However, rather than market participants deriving the number of Paired Shares, Imbalance Shares, and the Imbalance Side, the Exchange is proposing to derive and disseminate each value independently.[98] Moreover, Paired Shares, Imbalance Shares, and Imbalance Side fields are substantially similar to the Paired Shares, Imbalance Shares, and Imbalance Side fields that are currently offered by Nasdaq in the NOII.[99]

For example, in the case of a Closing Auction if the Continuous Book were to contain the following orders at the Lock-in Time, and the NBBO were to be $19.99 × $20.00:

Buy Orders	
Size	Price
4000	19.99
3000	19.98
2000	19.97
10000	19.96

Sell Orders	
Size	Price
500	20.00
5000	20.01
3000	20.02
10000	20.04

And the Closing Auction Book at the time were to contain the following orders:

Buy Orders	
Size	Price
8000	*Market*
3000	20.02
1000	19.99
4000	19.97
500	19.97

Sell Orders	
Size	Price
5000	*Market*
3000	19.98
1000	19.98
1000	20.00
1000	20.02

IEX would disseminate the following IEX Auction Information:

- *Reference Price:* $20.00
- *Paired Shares:* 10,000
- *Imbalance Shares:* 1,000
- *Imbalance Side:* Buy
- *Indicative Clearing Price:* $20.01
- *Auction Book Clearing Price:* $20.02
- *Collar Reference Price:* $19.995
- *Lower Auction Collar:* $18.00
- *Upper Auction Collar:* $21.99
- *Scheduled Auction Time:* 16:00:00
- *Extension Number:* 0

Trading Halts and LULD Plan

Exchange Rule 11.280 governs trading halts due to Extraordinary Market Volatility and pursuant to the LULD Plan. In order to address the obligations of a listing market under the LULD Plan, the Exchange proposes several amendments to IEX Rule 11.280. First, the Exchange proposes to add provisions governing the manner in which auction orders would be handled during an LULD trading pause, and how trading would be re-opened following such pause. As proposed, IEX Rule 11.280(e)(5)(F) provides that Auction Eligible Orders on the Auction Book are not price slid or canceled due to LULD price bands. This provision is substantially similar to Nasdaq Rule 4120(a)(12)(E)(5). In addition, the Exchange proposes to add paragraph (e)(7) to 11.280 to provide that the Exchange may declare an LULD trading pause for a NMS Stock listed on the

[98] Note, paired shares would be equal to the lesser of Reference Buy Shares and Reference Sell Shares; Imbalance Shares would be equal to the absolute value of Reference Sell Shares minus Reference Buy Shares; and the side of the greater between Reference Buy Shares and Reference Sell Shares is the imbalance side.

[99] *See* the Nasdaq Net Order Imbalance Indicator User Guide at 4–5.

Exchange during a straddle state. This provision is identical to BATS Exchange Rule 11.18(e)(7). The Exchange also proposes a clarifying change to the title to IEX Rule 11.280 to reference the Limit Up-Limit Down Plan. The Exchange believes that the revised rule title, will provide greater clarity to Members and other market participants. Lastly, proposed Rule 11.280(e)(8) provides that following a trading pause, the Exchange shall re-open trading in IEX-listed securities pursuant to the procedures set forth in IEX Rule 11.350(f), and trading in non-IEX-listed securities shall re-open upon receipt of the Price Bands from the single plan processor responsible for consolidation of information for the security. This provision is substantially similar to Bats Rule 11.18(e)(8), and is consistent with the commitment made by each primary listing exchange set forth in Amendment 12 to Limit Up-Limit Down Plan to file rule changes with the Commission under Section 19(b) of the Exchange Act to amend its respective trading practice for automated reopening's following a Trading Pause.

The Exchange also proposes to add new paragraphs (g) and (h) to IEX Rule 11.280 governing the initiation and termination of trading halts by IEX in IEX-listed securities. Proposed paragraphs (g) and (h) to IEX Rule 11.280 are complementary to each other, and to proposed Rule 11.280(e), in that paragraph (g) sets forth the conditions under which the Exchange can initiate trading halts in circumstances in which IEX deems it necessary to protect investors and the public interest. Furthermore, such trading halts shall be initiated and terminated pursuant to the procedures set forth in proposed paragraph (h), which sets for the various procedures the Exchange will follow to initiate and terminate trading halts, including the procedures related to IPO's on the Exchange for IEX-listed securities.

As proposed, new paragraph (g) provides that in circumstances in which IEX deems it necessary to protect investors and the public interest, IEX may halt trading in an IEX-listed security, pursuant to the procedures set forth in new paragraph (h), under the following circumstances:

- IEX Rule 11.280(g)(1) provides that the Exchange may halt trading on IEX of an IEX-listed security to permit the dissemination of material news,[100] provided, however, that in the Pre-Market Session, IEX will halt trading for dissemination of news only at the request of an issuer or pursuant to proposed Rule 11.280(g)(2). Consistent with the practices of other listing markets, IEX expects that when a listed company releases material news during the Regular Market Session, the Exchange will typically halt trading temporarily to ensure full dissemination of the news, generally referred to as a regulatory trading halt. However, and consistent with NYSE and Nasdaq rules, if an IEX-listed company were to issue material news during the Pre-Market Session the Exchange would only halt trading if the listed company requests that trading in its listed securities be halted pending dissemination of a public announcement. The Exchange believes that because of lower volume of trading generally during the Pre-Market Session, a listed company is best positioned to determine whether a trading halt is appropriate given the news it intends to release.[101] This approach is comparable to the rules of the NYSE and Nasdaq.[102] When the Exchange implements a regulatory trading halt in an IEX-listed security, trading is halted on all market centers to ensure full dissemination of the news to investors.
- IEX Rule 11.280(g)(2) provides that IEX may halt trading on IEX of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news. This provision is designed to prevent trading on IEX in a security which is pending disclosure and dissemination of material information so that all market participants have equal access to such information prior to making a trading decision. The provision is also consistent with the rules of other exchanges.[103]
- IEX Rule 11.280(g)(3) provides that IEX halt trading on IEX of a security listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx (an ''operational trading halt''). Further, IEX may halt trading on IEX in a security listed on IEX, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. Unlike with a regulatory trading halt, if an operational trading halt is in effect, IEX Members may commence quotations and trading otherwise than on IEX at any time following initiation of the operational trading halt, without regard to whether IEX has terminated the trading halt on IEX. These provisions are substantially similar to Nasdaq Rule 4120(a)(3) and are designed to enable IEX to provide optionality to IEX members with respect to operational trading halts.
- IEX Rule 11.280(g)(4) provides that IEX may halt trading in an American Depository Receipt (''ADR'') or other security listed on IEX, when the IEX-listed security or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons. This provision is designed to prevent trading on IEX in a security which is pending disclosure and dissemination of material information so that all market participants have equal access to such information prior to making a trading decision. The provision is also consistent with Nasdaq Rule 4120(a)(4).
- IEX Rule 11.280(g)(5) provides that IEX may halt trading in an IEX-listed security when IEX requests from the issuer of such security, issuer information relating to material news, the issuer's ability to meet IEX listing qualification requirements or any other information. This provision, which is substantially similar to Nasdaq Rule 4120(a)(5) is designed to assure that market participants do not effect transactions in a security when, in the Exchange's opinion, there is uncertainty as to whether all material information regarding the security, including its ability to meet listing requirements, has been fully disclosed to market participants.
- IEX Rule 11.280(g)(6) provides that IEX may halt trading in an IEX-listed security when there is extraordinary market activity in the security, and IEX determines that such activity is likely to have a material effect on the market for such security and believes that such activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to, IEX. This provision also provides that IEX may halt a security traded on IEX on an unlisted trading privileges basis that is subject to extraordinary market activity,

[100] The Exchange considers material news to be any news would reasonably be expected to affect the value of a company's securities or influence investors' decisions.

[101] Pursuant to Exchange Rule 14.207, listed companies are required to provide notice to the Exchange's Regulation Department at least ten minutes prior to release of specified material information if such release is made during System Hours (including the Pre-Market, Regular and Post-Market Sessions).

[102] *See* Section 202.06 of the NYSE Listed Company Manual and Nasdaq Rule 4120(a)(1).

[103] *See, e.g.,* Nasdaq Rule 4120(a)(2).

if, after consultation with another national securities exchange or FINRA, IEX believes that such activity is caused by a misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to such other exchange or FINRA, as applicable. This provision is substantially similar to Nasdaq Rule 4120(a)(6).

• IEX Rule 11.280(g)(7) provides that IEX may halt trading in a security that is the subject of an IPO on IEX. This provision, which is substantially similar to Nasdaq Rule 4120(a)(7), is designed to provide flexibility to enable a trading halt in the event of an unexpected system or other issue, or otherwise in connection with the start of trading in an IPO.

As noted above, proposed paragraph (h) provides the procedures for initiating and terminating a trading halt and is substantially similar to Nasdaq Rule 4120(c). As proposed, subparagraphs (h)(1), and (h)(2) provide that IEX issuers are required to notify IEX of the release of certain material news prior to the release of such information to the public, as required by Rule 14.207(b)(1) and directly to IEX's Regulation Department in the manner specified by IEX. Paragraph (h)(3) provides that, upon receipt of the information from issuer or other source, IEX will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

Paragraph (h)(4) provides that should IEX determine that a basis exists under IEX Rule 11.280(g) or (e) for initiating at trading halt or LULD trading pause, the commencement of the trading halt or pause will be effective at the time specified by IEX in a notice posted on a publicly available IEX Web site. IEX would also effectuate halt notices through the Securities Information Processor (''SIP''). The Exchange notes that during any trading halt or pause for which a Halt Auction or Volatility Auction under IEX Rules 11.350(e) or (f), respectively, will not occur, orders entered during the trading halt or pause will not be accepted. Paragraph (h)(5) provides that trading in a halted security shall resume at the time specified by IEX in a notice posted on a publicly available IEX Web site. As with initiation of a trading halt, IEX will also effectuate resumption notices through the SIP. These provisions are substantially similar to Nasdaq Rule 4120(c)(4) and (5), except that IEX will not accept orders with instructions to route to another exchange during any trading halt or pause for which a Halt of Volatility Auction under IEX Rules 11.350(e) or (f) will not occur.[104]

Paragraph (h)(6) specifies the process for trading halts initiated under paragraph (g)(6) based on the misuse of malfunction of an electronic quotation, communication, reporting, or execution system that is not operated by IEX. In such a situation, IEX will promptly contact the operator of the system in question (as well as any national securities exchange or FINRA facility to which such system is linked) to ascertain information that will assist IEX in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken to address the misuse or malfunction. If the operator of the system is unavailable when contacted by IEX, IEX will continue efforts to contact the operator of the system to ascertain information that will assist IEX in determining whether the trading halt should be terminated. A trading halt initiated under paragraph (g)(6) shall be terminated as soon as IEX determines either that the system misuse or malfunction that caused the extraordinary market activity will no longer have a material effect on the market for the security or that system misuse or malfunction is not the cause of the extraordinary market activity. This provision is substantially similar to Nasdaq Rule 4120(c)(6).

Paragraph (h)(7) specifies that a trading halt or pause in IEX-listed securities, initiated under IEX Rule 11.280(e)(2), (7) or (g)(1), (4), or (5) shall be terminated when IEX releases the security for trading at the conclusion of the Halt or Volatility Auction pursuant to IEX Rule 11.350(e) or (f), as applicable.

Paragraph (h)(8) sets forth the process for terminating a trading halt initiated in a security that is the subject of an IPO, pursuant to IEX Rule 11.280(g)(7).[105] As proposed, the trading halt shall be terminated when IEX releases the security for trading and the following conditions are satisfied:

• Users may enter orders in that security beginning at the start of the Order Acceptance Period (generally 8:00 a.m.) which will be accepted and entered into the System;

• Prior to terminating the halt there will be a Display Only Period during which IEX will disseminate IEX Auction Information via electronic means, and Users may continue to enter orders in that security in the System and IEX will begin to disseminate IEX Auction Information via electronic means;

• Thirty (30) minutes after the start of the Display Only Period, unless extended by the underwriter, the security will enter a Pre-Launch Period of indeterminate duration. The Pre-Launch Period and the Display Only Period will end and the security will be released for trading when the requirements of Rule 11.350(e)(2) are satisfied, and the following conditions are met:

○ IEX receives notice from the underwriter of the IPO that the security is ready to trade. The System will calculate the Indicative Clearing Price at that time and display it to the underwriter. If the underwriter then approves proceeding, the System will conduct the following validation checks:

▪ The System must determine that all market orders will be executed in the IPO Auction; and

▪ the security must pass the price validation test.[106]

The failure to satisfy the above conditions during the process to release the security for trading will result in a delay of the release for trading of the IPO, and a continuation of the Pre-Launch Period, until all conditions have been satisfied. The underwriter, with concurrence of IEX, may determine at

[104] *See* Nasdaq Rule 4120(c)(4)(B).

[105] The provisions are substantially similar to Nasdaq Rule 4120(c)(8) except that IEX would provide a 30-minute Display Only Period, rather than the 15-minute period that Nasdaq provides, in order to increase transparency and price discovery.

[106] As specified in Rule 11.280(h)(8)(c)(1) [sic], the validation test is as follows: Prior to the conclusion of the Pre-Launch Period, the underwriter shall select price bands for purposes of applying the price validation test. Under the price validation test, the System compares the Indicative Clearing Price approved by the underwriter under proposed Rule 11.280(h)(8)(A) with the actual price calculated by the IPO Auction. If the actual price calculated by the IPO Auction differs from the Indicative Clearing Price by an amount in excess of the price band selected by the underwriter, the security will not be released for trading and the Pre-Launch Period will continue. The underwriter shall select an upper price band (*i.e.,* an amount by which the actual price may not exceed the Indicative Clearing Price approved by the underwriter under proposed Rule 11.280(h)(8)(A)) and a lower price band (*i.e.,* an amount by which the actual price may not be lower than the Indicative Clearing Price approved by the underwriter under proposed Rule 11.280(h)(8)(A)). If a security does not pass the price validation test, the underwriter may, but is not required to, select different price bands before recommencing the process to release the security for trading. The price bands available for selection shall include $0 but shall not be in excess of $0.50. IEX will notify member organizations and the public of changes in available price band or increments through a notice that is widely disseminated at least one week in advance of the change. In selecting available price bands and increments, IEX will consider input from underwriters and other market participants and the results of past usage of price bands to adopt price bands and increments that promote efficiency in the initiation of trading and protect investors and the public interest.

any point during the IPO Auction process up through the conclusion of the Pre-Launch Period to postpone and reschedule the IPO. Market participants may continue to enter orders and order cancellations for participation in the IPO Auction during the Pre-Launch Period until the auction match.

Finally, paragraph (h)(9) provides that the process for halting and initial pricing of a security that is the subject of an IPO shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under IEX Rule 11.280(h)(8) that are performed by an underwriter with respect to an IPO. This provision is substantially similar to Nasdaq Rule 4120(c)(9).

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) [107] of the Act in general, and furthers the objectives of Sections 6(b)(5) [108] of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. IEX believes that operation of Exchange auctions for securities listed on the Exchange will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on the Exchange. In this regard, the proposed rule change is integral to its operation of a listing market pursuant to rules already approved by the Commission.[109] The existing U.S. exchange listing market for operating companies is essentially a duopoly of Nasdaq and NYSE. As of March 17, 2017 there were 4,767 operating companies listed on U.S. securities exchanges. All but 203, which are listed on NYSE's affiliate NYSE MKT, are listed on NYSE or Nasdaq. IEX believes that to the extent IEX's listing program is successful, it will provide a competitive alternative to the existing duopoly, which will thereby benefit issuers and investors, remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with the protection of investors and the public interest. Each of the existing listing markets offer auctions similar to the proposed Opening, Closing, IPO, Halt and Volatility auctions for IEX-listed securities, and the Exchange believes that offering such auctions is essential for operation of a listing market. Accordingly, the Exchange believes that the proposal will allow the Exchange to provide companies with another listing option, thereby promoting the aforementioned principles and purposes of Section 6(b)(5) [110] of the Act. For the same reasons, the Exchange believes that the proposal is also designed to support the principles of Section 11A(a)(1) [111] of the Act in that it is designed to promote fair competition among brokers and dealers and among exchange markets by offering a new listing market to compete with the existing Nasdaq and NYSE duopoly.

IEX Auctions, along with our market, are designed to incentivize and enable a broad range of market participants to enter trading interest for potential participation in the auctions. First, IEX does not impose membership, connectivity, or market data fees, in contrast to Nasdaq and NYSE, so there are no expensive barriers to entry for participation in the IEX Auctions. In addition, as proposed, IEX Auctions will utilize a simple and transparent price-display-time execution priority. Moreover, all Members are permitted to enter any type of Auction Eligible Order and there are no privileged participants (such as NYSE designated market makers and floor brokers) who receive enhanced priority, access to special order types, or receive information not available to other market participants.[112] IEX believes that this ''open access'' design will result in auctions that attract meaningful trading interest that will enable robust price discovery, consistent with the protection of investors and the public interest, and in alignment with issuers' interests.

With respect to the auction design, as described more fully below, the Exchange believes that the proposed rule change provides an auction methodology that will be a transparent, efficient, and robust process to aggregate trading interest submitted by a broad range of market participants to be matched at a single clearing price, consistent with the protection of investors and the public interest and in alignment with issuers' interests. As proposed, the IEX Auction rules are similar to auction rules of Nasdaq, NYSE, Arca, and Bats (each of which have been approved by the Commission and found to be consistent with the protection of investors and the public interest) with several differentiators designed to enhance price discovery, transparency and participation, each of which are discussed below.

As discussed in the Purpose Section, after informal discussions with various Members, the Exchange believes that excluding all non-displayed orders (including pegged orders) that were on the Continuous Book at the time of a halt dissemination from participating in the Halt Auction is consistent with the protection of investors and the public interest because Users submitting non-displayed orders are generally entrusting the Exchange to price such orders at values that are reflective of the market for a security. In the event of a trading halt, the market is in the process of reestablishing the value of a security, and therefore including non-displayed orders that are priced against a reference price that may not reflect adjustments in valuation resulting from additional information regarding the security during the halt could potentially harm investors. Similarly, as noted above, the Exchange believes excluding non-displayed orders from the Volatility Auction is consistent with the protection of investors and the public interest because Users submitting non-displayed orders are generally entrusting the Exchange to price such orders at values that are reflective of the market for a security. In the event of a volatility trading pause, the security has just experienced sharp price volatility and the market is in the process of reestablishing the value of a security, and therefore including non-displayed orders that are priced against a reference price that may not reflect adjustments in valuation during the pause could potentially harm investors.

While non-displayed limit orders are not necessarily ''pegged'' to any particular reference price (such as a midpoint peg order, for example), such

[107] 15 U.S.C. 78f.

[108] 15 U.S.C. 78f(b)(5).

[109] *See* Securities Exchange Act Release No. 34–78101 at 47 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222).

[110] 15 U.S.C. 78f(b)(5).

[111] 15 U.S.C. 78k–1(a)(1).

[112] *See* NYSE Rule 72(c)(ii) which provides that Floor broker and designated market makers have enhanced priority for the purpose of share allocation in an execution as compared to orders collectively represented in NYSE systems. *See also* NYSE Rule 70 and [sic] Supplementary Material .25 to [sic] NYSE Rule 123C describing the availability of discretionary e-Quotes or ''d-Quotes'' to Floor brokers. *See also* NYSE Rule 123C(6)(b) which provides that between 2:00 p.m. and 3:45 p.m. Floor brokers receive an imbalance data feed not available to other market participants.

orders are subject to the Midpoint Price Constraint pursuant to IEX Rule 11.190(h)(2), which states that non-displayed limit orders posting to the Order Book with a limit price more aggressive than the Midpoint Price is booked and ranked on the Order Book non-displayed at a price equal to the Midpoint Price. To reflect changes to the NBBO, the order is automatically re-priced by the System in response to changes in the NBBO to be equal to the less aggressive of the order's limit price or the Midpoint Price. Accordingly, in volatile markets that have triggered a trading pause or halt, limit orders resting on the Order Book that are not actively or algorithmically monitored are likely to have been restricted by the Midpoint Price Constraint. Accordingly, such orders would be priced against a reference price (*i.e.,* the Midpoint Price) that may not reflect adjustments in valuation during the halt or pause, which could potentially harm such investors.

As described in the Purpose Section, the Exchange believes that not supporting AGID modifiers in IEX Auctions is consistent with the protection of investors and the public interest because within the context of the aggregated auction match process, counterparties are not considered; only the aggregate available volume for execution is considered. It is illogical to cancel an order that happens to be allocated an execution against an order entered using the same MPID, because both orders execute at the exact same price to the exact same effect where the orders happen to execute against orders of a different MPID. Furthermore, the Exchange believes that supporting AGID modifiers and Minimum Quantity instructions as defined in Rule 11.190(b)(11) in IEX Auctions would introduce additional technical complexities to the clearing price determination process, and the Exchange believes providing simplicity in this regard is in the interest of the protection of investors and the public interest.[113]

As discussed in the Purpose section, the Exchange is proposing to utilize a default threshold percentage of ten (10) percent for the Opening/Closing Auction Collar because, based on informal discussion with various Members, as well as Nasdaq's usage of identical default threshold percentage values, such values typically provide an appropriate range within which price discovery may occur to maximize the number of shares executed in the auction. Furthermore, the Exchange believes utilizing the midpoint of the Protected NBBO to establish the Opening/Closing Auction Collar Reference Price is consistent with the protection of investors and the public interest in that the Protected NBBO represents the range of prices that best reflect the market for a security. In addition, utilizing the midpoint of the Protected NBBO may be less susceptible to volatility and manipulation, because in order to move the midpoint of the Protected NBBO to influence the auction, one or more Users would need to sweep the entire market, rather than simply entering aggressive interest on the Exchange.

Moreover, the Exchange believes that the proposed Opening/Closing Auction Collars are consistent with the protection of investors and the public interest in that the default threshold is identical to the default auction collar thresholds used by Nasdaq; however, Nasdaq utilizes the midpoint of the best bid and offer on Nasdaq's book as the collar reference price.[114] The Exchange anticipates modifying such benchmarks and thresholds in response to market-wide events that are driving price volatility, and would therefore benefit from temporarily widening threshold values in the interest of allowing robust price discovery, consistent with the protection of investors and the public interest. The Exchange notes that modification of the default threshold percentage values for the Opening/Closing Auction Collar are subject to the provisions of Section 19(b)(1) under the Act, and Rule 19b–4 thereunder.[115]

As described above, the Exchange believes that the Volatility Auction Collar, as proposed, is consistent with the protection of investors and the public interest. Specifically, as noted above, the Volatility Auction Collar, as proposed, is identical to the auction collars imposed by Bats, Nasdaq, and Arca when conducting an auction to resume a security subject to an LULD trading pause.[116] Furthermore, the proposed Volatility Auction Collar functionality is consistent with the commitment made by each primary listing exchange set forth in Amendment 12 to the Limit Up-Limit Down Plan to file rule changes with the Commission under Section 19(b) of the Exchange Act to amend its respective trading practice for automated reopening's following an LULD trading pause consistent with a standardized approach agreed to by Limit Up-Limit Down Plan Participants that would allow for extensions of an LULD trading pause if equilibrium cannot be met for a reopening price within specified parameters.[117]

As proposed, Halt and IPO Auctions will not be subject to a collar, which is substantially similar to operation of the Bats halt auction and the Nasdaq halt cross.[118] In the case of a Halt or IPO Auction, the process for arriving at the clearing price includes methods for automatic (and in the case of an IPO, manual) extensions when there is a market order imbalance, or the clearing price experiences volatility. In addition, there is no continuous trading before a Halt or IPO Auction, and therefore there is no reference price that is reflective of the market for the security from which to derive an appropriate collar. Accordingly, the Halt and IPO Auctions are designed to allow for additional price discovery to occur in order for supply and demand to efficiently price the security. Furthermore, Halt and IPO Auctions are not constrained to occur at a specific time like the Open and Closing Auctions (*i.e.,* the start and end of Regular Market Hours), therefore the auction process continues until prices converge to an equilibrium and collars are not required to constrain prices before an equilibrium is reached.

As described in the purpose section, after informal discussion with various Members, in the event there is no crossing interest for an IEX Auction (and therefore no auction occurs), the Exchange proposes to utilize the initial (final) trade on IEX when the Exchange is determining the official auction price of an IEX-listed security using IEX auctions, because much of the trading interest is aggregated at the primary trading center leading into and immediately following the auction.

[113] The Exchange notes that Bats does not support broker self-match restrictions in an IPO auction, or on regular market and limit orders in the Opening and Closing auctions. *See* Bats Rule 11.23(a)(8)(C)(1) [sic] and Bats US Equities Auction Process specification at 9. *See also* NYSE Arca Rule 7.31(i)(2), which states that Orders marked with an STP modifier will *not* be prevented from interacting during any auction. (Emphasis added)

[114] *See* Nasdaq Rule 4752(d)(2)(E).

[115] *See* 15 U.S.C. 78s(b)(1), and 17 CFR 240.19b–4.

[116] *See* 81 FR 75875 (November 1, 2016) (SR–BatsBZX–2016–61); 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR–NASDAQ–2016–131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (File No. SR–NYSEArca–2016–130).

[117] *See e.g.,* Securities Exchange Act Release Nos. 79162 (October 26, 2016), 81 FR 75875 (November 1, 2016) (SR–BatsBZX–2016–61); 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR–NASDAQ–2016–131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (File No. SR–NYSEArca–2016–130) and Securities and Exchange Act Release No. 34–79410; File No. 4–631 (Notice of Filing of the Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

[118] *See* Bats Rule 11.23(d), and Nasdaq Rule 4753.

Therefore, the initial (final) trade on the Exchange is likely to best reflect the market for a security in the event no crossing interest exists.[119] Moreover, in the event a disruption prevents the Exchange from conducting an auction in an IEX-listed security, the Exchange is proposing to utilize the initial, latest, or final consolidated last sale eligible trade. If the Exchange is experiencing a disruption that is preventing the execution of an auction, market participants would be made aware of such disruption pursuant to the contingency procedures set forth above, and market participants are therefore likely to re-route such interest to alternative execution venues. Therefore, the initial, latest, or final consolidated last sale eligible trade is likely to best reflect the market for a security in the event of a disruption on the Exchange that is preventing the execution of an auction for an IEX-listed security.[120] Accordingly, the Exchange believes the proposed Rule is consistent with the protection of investors and the public interest.

The Exchange also believes that the auction clearing price determination is designed to support robust price discovery in a transparent manner, consistent with the protection of investors and the public interest, and in furtherance of a free and open market and a national market system. Specifically, auctions will be matched at the price that maximizes the number of shares to be executed at a single price, with appropriate tie breakers that reflect supply and demand from Auction Eligible Orders in the security and displayed interest in the market (*i.e.,* by considering the Protected NBBO, IEX BBO, or Final Consolidated Last Sale Eligible Trade, depending on market conditions, as the final tie breaker). As discussed below, the Exchange believes that its proposed auction clearing price determination methodology is consistent with the protection of investors and the public interest because it is designed to provide an auction clearing price based on robust price discovery that reflects supply and demand in the subject security. The clearing price determination process proposed by the Exchange is similar to Nasdaq, with certain modifications as described in the Purpose Section.

Specifically, as proposed, the clearing price determination for both Nasdaq and IEX would first attempt to maximize the number of shares executable in the auction at a single price. However, in the event there is more than one price at which shares are maximized, Nasdaq Rule 4752(d)(2)(B) states that the auction shall match at the price that minimizes any imbalance, and if there is more than one price at which shares are maximized and imbalance is minimized, Nasdaq Rule 4752(d)(2)(C) states that the auction shall match at the price at which shares will remain unexecuted in the auction. The Exchange believes that Nasdaq Rule 4752(d)(2)(B) and (C) are often the same price, because the price at which imbalance is minimized is often also the price at which shares remain unexecuted in the auction. Accordingly, the Exchange is proposing to consolidate these conditions, and instead utilize the price at which shares will remain unexecuted in the auction (*i.e.,* the price of the most aggressive unexecuted order).[121]

Moreover, in the event the clearing price determination process results in a clearing price range (*i.e.,* shares are maximized at each price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order, resulting in an ''auction price range''), the Exchange proposes to utilize the price closest the Volume Based Tie Breaker within the auction price range (*i.e.,* the price at or higher than the most aggressive unexecuted buy order and at or lower than the most aggressive unexecuted sell order that is closest or equal to the Volume Based Tie Breaker).[122] This differs from Nasdaq in that in the event the clearing price determination process results in a clearing price range, Nasdaq Rule 4752(d)(2)(D) states that the auction shall match at the price that minimizes the distance from the bid-ask midpoint of the inside quotation on Nasdaq prevailing at the time of the auction. The proposed rule is designed to match the auction at the Volume Based Tie Breaker (*e.g.,* midpoint of the Protected NBBO). The Exchange believes that when when the clearing price determination process results in a clearing price range, matching the auction at the price closest to the midpoint of the Protected NBBO is consistent with the protection of investors and the public interest, because such prices reflect the broader market for the security.

Lastly, in the event the clearing price determined pursuant to the procedures above is below (above) the lower (upper) threshold of the Opening/Closing Auction Collar in the Opening or Closing Auction, the value will be the price at or within the range of prices between the lower (upper) threshold of the Opening/Closing Auction Collar and the lower (upper) threshold of the Reference Price Range that best satisfies the conditions described above. This differs from Nasdaq in that under Nasdaq Rule 4752(d)(2)(E), if the auction price is outside of the Nasdaq opening or closing auction collars, the auction shall occur at a price within the threshold amounts that best satisfies the conditions of Nasdaq Rule 4752(d)(2)(A) through (D). The Exchange believes that the proposed rule is designed to provide greater clarity to Users regarding the range of prices within which the Opening or Closing Auction will occur (because the range is narrower) in the event the clearing price is outside of the collar.

The Exchange notes that the clearing price determination processes utilized by other primary listing markets are not homogeneous. As described above, the Exchange designed IEX Auctions with certain features that are substantial similar to current functionality offered by other listings markets, while making certain changes designed to democratize auction participation among all Members via simplification and transparency. Accordingly, the Exchange believes that the proposed auction design will provide a transparent, efficient, and robust process to aggregate trading interest submitted by a broad range of market participants to be matched at a single clearing price, consistent with the protection of investors and the public interest, and in alignment with issuers' interests.

As discussed in the Purpose Section, for Opening and Closing Auctions, the Exchange proposes that non-displayed buy (sell) orders on the Continuous Book with a resting price (as defined in proposed Rule 11.350(b)(1)(A)(i)) within the Reference Price Range will be priced at the Protected NBB (NBO) for the purpose of determining the clearing price, but will be ranked and eligible for execution in the Opening or Closing Auction match at the order's resting price. Thus, non-displayed orders will

[119] *See e.g.,* proposed Rules 11.350(c)(2)(B) and 11.350(d)(2)(B).

[120] *See e.g.,* proposed Rules 11.350(c)(4)(i) [sic].

[121] The Exchange notes that in the rare event that Auction Eligible Orders are perfectly matched at multiple prices, the prices at which imbalance is minimized and the prices at which shares will remain unexecuted are different. In such cases, the range of prices within which the auction can occur on Nasdaq would be one (1) MPV less aggressive than the prices within which the auction can occur as proposed by the Exchange. Furthermore, in the event that Auction Eligible Orders are perfectly matched at two prices that create a one cent range, the price at which imbalance is minimized and the price at which shares remain unexecuted is the same.

[122] The Volume Based Tie Breaker is generally the midpoint of the Protected NBBO. *See* proposed Rule 11.350(a)(33).

influence the clearing price if such price is outside the Reference Price Range, but not if the clearing price is within the Reference Price Range. The Exchange believes that the proposed treatment of non-displayed interest on the Continuous Book resting within the Reference Price Range is designed to protect the anonymity of such resting non-displayed interest during the dissemination of IEX Auction Information.

The Exchange believes that market participants generally choose to enter non-displayed interest in order that such interest is not publicly disseminated in market data feeds or otherwise. The Exchange believes that if non-displayed interest on the Continuous Book influenced the determination of the clearing price within the Reference Price Range (*i.e.,* generally within the Protected NBBO) for an Opening or Closing Auction then the existence of such non-displayed interest could be deciphered by market participants through IEX Auction Information, thereby leaking order information in a manner inconsistent with the terms of the order, and the protection of investors and the public interest. For example, and as discussed in the Purpose section, the Exchange believes that information leakage could occur if the Indicative Clearing Price is closer to the midpoint of the NBBO than the Reference Price. This would indicate that there is non-displayed interest resting on the Continuous Book for at least the size of the imbalance and priced at least as aggressive as the Reference Price. Thus, the Exchange proposes to price non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range to the Protected NBB (NBO) for the purpose of determining the clearing price, but allow such orders to be ranked and eligible for execution in the Opening or Closing Auction match at the order's resting price, in order to avoid leaking order information regarding such non-displayed orders, consistent with the protection of investors and the public interest.[123]

Furthermore, the Exchange notes that the proposed handling of non-displayed orders on the Continuous Book with a resting price within the Reference Price Range in the Opening and Closing Auctions is functionally substantially similar to the operation of Nasdaq Imbalance Only (''IO'') orders in the Nasdaq opening and closing cross. Specifically, because IO's are repeatedly repriced to be equal to the Nasdaq best bid for buy orders or the Nasdaq best offer for sell orders (collectively, the ''Nasdaq BBO''), such orders effectively do not influence the determination of the clearing price within the Nasdaq BBO, but remain eligible for execution in the auction solely to offset imbalance, and influence the clearing price of the auction when it moves beyond the Nasdaq BBO.[124] In the same manner, non-displayed buy (sell) orders on the IEX Continuous Book with a resting price within the Reference Price Range are priced to the Protected NBB (NBO) for the purpose of determining the clearing price and thus effectively do not influence the determination of the clearing price within the Reference Price Range, but are ranked and remain eligible for execution in the auction at the order's resting price. In addition, non-displayed buy (sell) orders on the Continuous Book with a resting price within the Reference Price Range will influence the clearing price of the auction when the clearing price moves lower (higher) than the Reference Price Range. Accordingly, the Exchange believes that the proposed treatment of non-displayed orders resting within the Reference Price Range on the Continuous Book in the Opening and Closing Auction does not present any new or novel functionality that has not already been considered by the Commission, and is consistent with the protection of investors and public interest.

As discussed in the Purpose Section, the Exchange does not propose to offer an imbalance order *type* (*i.e.,* an order type that by its terms is designed to solely offset a buy or sell order imbalance in the auction), which is currently offered by Nasdaq, but not by Bats.[125] However, Users who wish to offset buy or sell imbalances in an auction may do so by entering LOO, LOC, limit orders priced less aggressive than the applicable auction collar, or specifically in the case of an Opening or Closing Auction, non-displayed interest on the Continuous Book is eligible to offset imbalance without influencing the determination of the clearing price within the Reference Price Range. After informal discussion with various Members, the Exchange believes that imbalance only order types are generally employed by Users deploying sophisticated auction trading strategies, and are seldom used by long-term or natural investors. Accordingly, the Exchange believes that not offering a special imbalance only order type that is unlikely to garner broad User adoption, while still offering investors the opportunity to offset imbalances using LOO, LOC, limit orders, or specifically in the case of an Opening or Closing Auction, non-displayed interest on the Continuous Book with a resting price within the Reference Price Range will simplify the process of participating in auctions and attract more trading interest from a broad range of market participants, thereby resulting in robust price discovery for the IEX Auction, consistent with the protection of investors and the public interest.

The Exchange also believes that the proposed Lock-in and Lock-out Time is consistent with the protection of investors and the public interest, because in the final minutes leading into the auction match, the Exchange is attempting to achieve equilibrium and stability by avoiding the increase of imbalances or large price swings resulting from aggressively priced orders in the Auction Book, while still allowing for price discovery to occur within the applicable auction collars leading up to the auction match. The Exchange notes that that Bats implements an identical Opening Auction Lock-out time (9:28 a.m.), at which time LOO and MOO orders, as well as RHO orders will be rejected. In the context of the IEX Opening Auction, such orders are the equivalent of the order types on the Opening Auction Book. Furthermore, Bats restricts Users from canceling or modifying Eligible Auction Orders between the Lock-out Time and the auction match, except for RHO limit orders, which may be modified (but not canceled) until the auction match.[126]

The Exchange is proposing to afford Users the ability to enter auction specific interest (within the applicable auction collar) beyond the typical cutoff times employed by other exchanges, while locking-in such interest and beginning the dissemination of IEX Auction Information using a time-line that will be familiar to Users. Specifically, the proposed approach is

[123] The Exchange notes as well that its proposed handling of non-displayed interest on the Continuous Book will not impact the accuracy or completeness of the Indicative Clearing Price because the methodology for calculating the Indicative Clearing Price is identical to the methodology used to calculate the auction match, and thus the Indicative Clearing Price will reflect the price at which the auction would occur including all Auction Eligible Orders (including non-displayed order on the Continuous Book) as of the dissemination time.

[124] *See* Nasdaq Rule 4702(b)(10), which states that if an imbalance only order to buy (sell) is entered with a price that is higher (lower) than the highest bid (lowest offer) on the Nasdaq Book, the price of the Imbalance Only Order will be modified repeatedly to equal the highest bid (lowest offer) on the Nasdaq Book, subject to the Users limit price.

[125] *See* Nasdaq Rule 4702(b)(10) and (13).

[126] *See* Bats Rule 11.23(b)(1)(A)–(B).

similar to Bats and Nasdaq,[127] in applying a 9:28 a.m. Lock-out [sic] [128] Time for the Opening Auction, where LOO and MOO interest is no longer accepted [sic] [129] and may no longer be modified; however, after informal discussion with various Members that have expressed demand for a later cut off time, the Exchange is proposing that LOO orders and limit orders with a time-in-force of DAY or GTX will continue to be accepted until the Opening Auction Lock-out Time (*i.e.,* 9:29:50 a.m., ten (10) seconds prior to the Opening Auction match) so long as they are not Hyper-aggressive Auction Orders, which will allows Users to continue to express interest, and offset imbalances via orders designated for the Auction Book in the minutes leading up to the auction match. Similarly, for the Closing Auction, the Exchange is proposing to apply a 3:50 p.m. Lock-out [sic] [130] Time, where MOC interest is no longer accepted and Auction Eligible Orders on the Auction Book may no longer be modified or canceled, unless a user requests cancelation of an order to correct a legitimate error in the order prior to 3:55 p.m. Moreover, the Exchange is proposing that LOC orders will continue to be accepted until the Closing Auction Lock-out Time (*i.e.,* 3:59:50 p.m., ten (10) seconds prior to the Closing Auction match) so long as they are not Hyper-aggressive Auction Orders, which will allows Users to continue to express interest, and offset imbalances via orders designated for the Auction Book in the minutes leading up to the auction match.[131]

Furthermore, for both the Opening and Closing Auctions, Hyper-aggressive Auction Orders will be rejected after the Lock-in Time, which is designed to minimize the increase of imbalances or large price swings resulting from aggressively priced orders in the Auction Book during the last minutes leading into the auction. Instead, the Exchange is proposing to allow for price discovery to occur on the Auction Book within the applicable auction collars and on the Continuous Book leading up to the auction match, allowing for a convergence of the Auction Book with the Continuous Book to establish equilibrium. The Exchange believes that allowing Users to offset imbalances on the Auction Book after the Lock-in Time is designed to promote price discovery and stability, and establish equilibrium leading into the auction match because such orders are not able to be canceled or modified after entry (*i.e.,* they are locked-in), which is in direct contrast with offsetting orders on the Continuous Book that may be fleeting, because they are eligible for cancellation, modification, or execution until the auction match.

Furthermore, as described above, the Exchange believes that allowing Auction Eligible Orders on the Continuous Book to continue to be submitted, modified, and canceled until immediately prior to execution is consistent with the protection of investors and the public interest because such orders allow Users to offset imbalances in the auction until the auction match occurs, which will further the Exchange's intended goal of achieving equilibrium and stability prior to the auction match. In addition, the Exchange does not propose to interrupt continuous trading, and therefore believes it is necessary to allow Continuous Book orders to remain unrestricted in the interest of maintain fair and orderly markets, and the protection of investors and the public interest. The Exchange also notes that Bats offers identical functionality for all orders eligible for execution in the Bats Pre-Opening Session.[132] Similarly, NYSE Arca allows orders to enter the Continuous Book after the Opening and Closing Auction Imbalance Freeze.[133] The Exchange does not believe that allowing orders to enter the Continuous Book and be eligible for execution in the auction match until immediately before the auction match presents any unique concerns regarding manipulation of the auction match. To the contrary, because the Exchange generally utilizes the Protected NBBO as the Reference Price Range for the auction match (rather than the midpoint of the IEX BBO), the auction process may be less susceptible to attempted manipulation, because in order to influence the auction, one or more Users would need to sweep the entire market and impact the Protected NBBO, rather than simply entering aggressive interest on the Exchange.

The Exchange believes that providing transparent Opening Auction Contingency Procedures is consistent with the protection of investors and the public interest in that Users will have more clarity regarding the status of open orders, therefore allowing for such Users to resubmit such interest in the Regular Market Session, or re-route such interest to an alternate trading center after IEX has opened the security for trading. In addition, the Opening Auction Contingency Procedures are designed to ensure the orderly and timely opening of IEX-listed securities, which will help to ensure a fair and orderly market for securities listed on the Exchange. Similarly, the Exchange believes that the proposed Closing Auction Contingency Procedures are designed to ensure the orderly and timely closing of IEX-listed securities, which will help to ensure a fair and orderly market for securities listed on the Exchange. Furthermore, the proposed Closing Auction Contingency Procedures are identical to those recently proposed by Nasdaq in conjunction with NYSE and NYSE Arca, and the SIPs as part of a larger industry initiative to ensure the orderly execution and dissemination of official closing prices. Accordingly, the Exchange believes that the proposed auction contingency procedures are consistent with the protection of investors and the public interest.

The Exchange believes that the data elements proposed to be included in IEX Auction Information will provide market participants with a comprehensive range of data relevant to auction pricing that will enable market participants to make informed decisions on whether and at what prices to enter

[127] *See* Nasdaq Rule 4702(b)(8)–(9) and (11)–(12).

[128] The Commission notes that, for opening auctions, IEX is proposing a Lock-*in* (not Lock-*out*) time of 9:28 a.m. *See* proposed Rule 11.350(a)(22) (defining ''Lock-in Time'').

[129] The Commission notes that, for opening auctions, IEX is proposing to: (1) Accept LOO orders until the Lock-out time as long as they are not Hyper-aggressive Auction Orders, and (2) not accept MOO orders after the Lock-in Time.

[130] The Commission notes that, for closing auctions, IEX is proposing a Lock-*in* (not Lock-*out*) time of 3:50 p.m. *See* proposed Rule 11.350(a)(22) (defining ''Lock-in Time'').

[131] The Exchange notes that as explained by a recent study on NYSE auctions conducted by Greenwich Associates, NYSE d-Quotes (which can be entered by broker that have relationships with NYSE floor brokers, or trading algorithms that are able to enter orders directly via FIX) contribute a meaningful portion of closing auction volume, as evidenced by the significant increase and fluctuations of indicative volume taken as a percentage of realized volume in the closing auction. Specifically, NYSE's auction data feed shows a material spike in indicative volume at 3:55 p.m., when d-Quotes are first included in the NYSE auction data feed, followed by fluctuations in indicative volume as a percent of realized volume. The Exchange further notes that the proposed handling of LOO, LOC, and limit orders submitted after the Lock-in Time that are not priced beyond the Opening/Closing Auction Collars is distinguishable from NYSE d-Quotes in that d-Quotes can be entered at any price, and can be canceled. As proposed, LOO, LOC, and limit orders submitted after the Lock-in Time that are not priced beyond the Opening/Closing Auction Collars cannot be canceled. The proposed order handling and IEX Auction information dissemination is designed to reflect ''locked-in'' interest on the Auction Book, which is intended to stimulate price discovery, and reduce fluctuations indicative volume taken as a percentage of realized volume that are caused by Users canceling orders on the Auction Book. *See* Trading the Auctions, Greenwich Associates, 2017, Doc ID 16–2068 (*https://www.greenwich.com/equities/trading-auctions*).

[132] *See* Bats Rule 11.23(b)(1)(C).

[133] *See* Arca Rule (c)(3)(D) and (d)(2)(C) [sic].

orders for potential participation in an IEX Auction.[134] The Exchange also notes that the methodology for calculating the Indicative Clearing Price is identical to the methodology used to calculate the clearing price of the auction match, and thus the Indicative Clearing Price will reflect the price at which the auction would occur as of the dissemination time. Moreover, these data elements are substantially similar to those currently provided by Nasdaq, as well as collar information proposed by Nasdaq, Arca, and Bats.[135] However, as proposed, the Exchange will disseminate IEX Auction Information data every one second between the Lock-in Time and the auction match for the Opening and Closing Auctions, and during the Display Only Period for IPO, Halt, and Volatility Auctions. In contrast, NYSE, Nasdaq and Bats disseminate their auction data every five seconds. IEX believes that disseminating auction data every second will contribute to increased transparency regarding relevant auction information, thus leading to more robust pricing, consistent with the protection of investors and the public interest. Moreover, IEX Auction Information will be provided to Members and other recipients of Exchange data on terms that are reasonable and not unfairly discriminatory in that it will be provided free of charge. IEX Auction Information will also be made available free of charge on the Exchange's public Web site via the IEX Data Platform.

The fields proposed for dissemination in IEX Auction Information are strategically tailored to the IEX Auction model, and were developed after informal discussion with various Members, as well as reference to existing fields offered in auction data provided by other exchanges, including the Nasdaq NOII, and the Bats Auction Feed. Specifically, the Indicative Clearing Price and Auction Book Clearing Price are substantially similar to the Nasdaq ''Near Clearing Price'' and ''Far Clearing Price'' as well as the Bats ''Indicative Price'' and ''Auction Only Price'', and should therefore be familiar to Members that trade in the Nasdaq and Bats auctions.[136] Similarly, the proposed Reference Price field is substantially similar to the Reference Price utilized by Bats.[137]

Moreover, as proposed, the Exchange will utilize orders on the Auction Book to calculate the Paired Shares, Imbalance Shares, and Imbalance Side fields included in IEX Auction Information (*i.e.,* both displayed and non-displayed orders on the Continuous Book are not accounted for when determining the number of shares that can be matched or remain unexecuted at the current Reference Price). The proposed Paired Shares, Imbalance Shares, and Imbalance Side fields are designed to enhance the reliability of the fields disseminated in IEX Auction Information, and mitigate potential gaming scenarios that could negatively impact Users trading in IEX Auctions.

Specifically, the fields as proposed are designed to avoid disseminating Paired Shares and Imbalance Shares based on orders on the Continuous Book that may be fleeting. Orders on the Continuous Book are not subject to lock-in or lock-out restrictions, and may therefore be canceled at any time before the auction match. Including potentially fleeting orders in the Paired Shares and Imbalance Shares fields could have negative implications for price discovery leading up to the auction match by discouraging Users from offsetting Imbalance Shares, leaving unmatched shares on the Auction Book at the time of the match when Continuous Book orders that were ostensibly offsetting the Imbalance Shares (and contributing to Paired Shares) are canceled prior to the auction. Accordingly, the proposed fields are consistent with the protection of investors and the public interest, in that they are designed to increase the reliability of the fields disseminated in IEX Auction Information, and mitigate potential gaming scenarios that could negatively impact Users trading in IEX Auctions.

Furthermore, as proposed, the Paired Shares field is designed to allow Users to determine the likelihood of their Eligible Auction Orders being executed in the auction. Specifically, because Paired Shares only reflect orders that are locked in to the auction (and therefore will be eligible for execution in the auction), Users can assess their chances of receiving an execution in the auction match based on the marketability of their order against the Indicative Clearing Price, and the number of Paired Shares against their order size. For example, if the final Indicative Clearing Price is $10.00, and IEX has 100,000 shares paired, a User that has a LOC order to buy 10,000 shares with a limit price of $10.50 has a high likelihood of receiving a 10,000 share execution in the Closing Auction. To continue the example and highlight the positive effects of the proposed functionality on price discovery, if the Indicative Clearing Price were to have moved away from the participant (to $10.50, for example), such User's chances of receiving an execution in the auction are diminished because the auction match price has moved to the order's limit price, and such order is ''locked-in'' (*i.e.,* ineligible for modification or cancelation). Accordingly, Users are incentivized to express their full limit on Auction Eligible Orders in order to increase the likelihood of receiving an execution in the Closing Auction at a price they believe reflects the fundamental value of the security. This truthful representation of full limit prices is designed to enhance price discovery leading into the auction match, consistent with the protection of investors and the public interest.

The Exchange further notes that as proposed, the Paired Shares, Imbalance Shares, and Imbalance Side fields are substantially similar to the ''Reference Buy Shares'' and ''Reference Sell Shares'' fields currently offered by Bats on the Bats Auction Feed, which provide the number of shares associated with buy (sell) side Eligible Auction Orders (which are on the Bats auction book, as defined in Bats Rule 11.23(a)(8)) that are priced equal to or greater (less) than the Reference Price. However, rather than market participants deriving the number of Paired Shares, Imbalance Shares, and the Imbalance Side, the Exchange is proposing to derive and disseminate each value independently.[138] Moreover, Paired Shares, Imbalance Shares, and Imbalance Side fields are substantially similar to the Paired Shares, Imbalance Shares, and Imbalance Side fields that are currently offered by Nasdaq in the NOII.[139] Accordingly, IEX Auction Information, including the proposed Paired Shares, Imbalance Shares, and

[134] As noted in the Purpose section, IEX intends to disseminate substantially the same information through the Consolidated Quotation System operated by the Consolidated Tape Association (''CTA'') SIP, pending approval by the Operating Committee of the CTA. Following such approval, IEX will amend Rule 11.330 to reflect this additional means of dissemination.

[135] *See* SR–NASDAQ–2016–131, SR–BatsBZX–2016–61, and NYSEArca–2016–130.

[136] *See* the Bats US Equities Auction Process specification at 8, as well as the Nasdaq Net Order Imbalance Indicator User Guide at 4–5.

[137] *See* the Bats US Equities Auction Process specification at 7, and 5, which define the Reference Price as the price within the Reference Price Range that maximizes the number of shares to be executed, minimizes the imbalance, and minimizes the distance to the Volume Based Tie Breaker.

[138] Note, paired shares would be equal to the lesser of Reference Buy Shares and Reference Sell Shares; Imbalance Shares would be equal to the absolute value of Reference Sell Shares minus Reference Buy Shares; and the side of the greater between Reference Buy Shares and Reference Sell Shares is the imbalance side.

[139] *See* the Nasdaq Net Order Imbalance Indicator User Guide at 4–5.

Imbalance Side fields do not present any new or novel issues not already considered by the Commission and approved as consistent with the protection of investors and the public interest.

The Exchange also believes that the proposed trading halt and LULD trading pause rule provisions are consistent with the protection of investors and the public interest because such provisions provide for the imposition of a regulatory trading halt in an IEX-listed security in order to prevent trading from occurring in such security when all market participants do not have equal access to material news or other information necessary to make an informed trading decision. With respect to operational trading halts, proposed IEX Rule 11.280(g)(3) provides appropriate optionality to Members and market makers in determining whether to continue trading when there is an order imbalance or influx on another market. As discussed in the Purpose section, the proposed trading halt and LULD trading pause rules are substantially similar to Nasdaq rules approved by the Commission (described above) and thus do not raise any new or novel issues. Moreover, the proposed LULD trading pause provisions are consistent with the LULD Plan as well as Nasdaq rules.

Lastly, the Exchange believes that the proposed operational rules regarding IPO's conducted on the Exchange are consistent with the protection of investors and the public interest because the process is designed to provide underwriters with the necessary tools to ensure the IPO Auction as well as continuous trading following the auction operate in an orderly manner, consistent with the protections of investors and the public interest. In addition, as noted above, the proposed operational rules regarding IPO's are substantially similar to Nasdaq Rule 4120(c)(8), and therefore do not present any novel issues the Commission has not already considered.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, and as discussed in the Statutory Basis section, the Exchange believes that offering auctions is essential for operation of a listing market which will allow the Exchange to provide companies with another listing option, thereby promoting intermarket competition between exchanges in furtherance of the principles of Section 11A(a)(1) [140] of the Act in that it is designed to promote fair competition among brokers and dealers and among exchange markets by offering a new listing market to compete with the existing Nasdaq and NYSE duopoly.

With respect to the auction design, the Exchange does not believe that the proposal will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. With respect to intermarket competition, as a new listing venue, IEX expects to face intense competition from existing exchanges. Consequently, the degree to which the IEX auction design could impose any burden on intermarket competition is extremely limited, and IEX does not believe that the auction design would impose any burden on competing venues that is not necessary or appropriate in furtherance of the purposes of the Act.

With respect to intramarket competition, the auction design will apply equally to all IEX Members and market participants that send orders to IEX through IEX Members. Moreover, IEX believes that the ''open access'' auction design will result in auctions that attract meaningful trading interest that will enable robust price discovery, and enhance intramarket competition. All Members are permitted to enter any type of Auction Eligible Order and there are no privileged participants who receive enhanced priority, have access to special order types, or receive information not available to other market participants. Consequently, IEX does not believe that the proposal will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also does not think that the content and manner by which IEX Auction Information will be disseminated will impose any burden on competition, since the data will be provided to all Members and market participants free of charge and on terms that are not unreasonably discriminatory.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

IEX requested comments from Members and other market participants regarding the proposed auction design. The ''Request for Comment Regarding Auctions for IEX-listed Securities'' was disseminated to IEX Members and other market participants [141] on November 14, 2016 (see Exhibit 2). No written or verbal comments were received. However, as discussed in the Purpose Section, in designing the proposed auctions, the Exchange held discussions with a variety of buy-side and sell-side market participants, including large banks and broker dealers that provide a variety of services with diverse customer bases and trading strategies, electronic market makers, asset managers, issuers and institutional investors.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–IEX–2017–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2017–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[140] 15 U.S.C. 78k–1(a)(1).

[141] Market participants that are not Members, but had previously requested to be included in IEX communications were included.

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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2017–10, and should be submitted on or before May 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[142]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09310 Filed 5–8–17; 8:45 am]

BILLING CODE 8011–01–P

[142] 17 CFR 200.30–3(a)(12).

FEDERAL REGISTER

Vol. 82 Tuesday,

No. 88 May 9, 2017

Part IV

The President

Proclamation 9605—National Day of Prayer, 2017

Executive Order 13798—Promoting Free Speech and Religious Liberty

Federal Register
Vol. 82, No. 88
Tuesday, May 9, 2017

Presidential Documents

Title 3—

The President

Proclamation 9605 of May 4, 2017

National Day of Prayer, 2017

By the President of the United States of America

A Proclamation

We come together on our National Day of Prayer as one Nation, under God, to show gratitude for our many blessings, to give thanks for His providence, and to ask for His continued wisdom, strength, and protection as we chart a course for the future. We are united in prayer, each according to our own faith and tradition, and we believe that in America, people of all faiths, creeds, and religions must be free to exercise their natural right to worship according to their consciences.

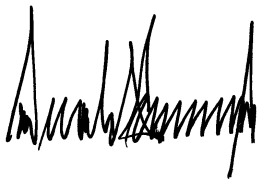
We are also reminded and reaffirm that all human beings have the right, not only to pray and worship according to their consciences, but to practice their faith in their homes, schools, charities, and businesses—in private and in the public square—free from government coercion, discrimination, or persecution. Religion is not merely an intellectual exercise, but also a practical one that demands action in the world. Even the many prisoners around the world who are persecuted for their faith can pray privately in their cells. But our Constitution demands more: the freedom to practice one's faith publicly.

The religious liberty guaranteed by the Constitution is not a favor from the government, but a natural right bestowed by God. Our Constitution and our laws that protect religious freedom merely recognize the right that all people have by virtue of their humanity. As Thomas Jefferson wisely questioned: ''can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?''

In 1789, President George Washington proclaimed a day of public thanksgiving and prayer, calling upon Americans to ''unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations.'' In 1988, the Congress, by Public Law 100–307, called on the President to issue each year a proclamation designating the first Thursday in May as a ''National Day of Prayer.'' On this National Day of Prayer, the right to pray freely and live according to one's faith is under threat around the world from coercive governments and terrorist organizations. We therefore pray especially for the many people around the world who are persecuted for their beliefs and deprived of their fundamental liberty to live according to their conscience. We pray for the triumph of freedom over oppression, and for God's love and mercy over evil.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, do hereby proclaim May 4, 2017, as a National Day of Prayer. I invite the citizens of our Nation to pray, in accordance with their own faiths and consciences, in thanksgiving for the freedoms and blessings we have received, and for God's guidance and continued protection as we meet the challenges before us.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09570
Filed 5–8–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Executive Order 13798 of May 4, 2017

Promoting Free Speech and Religious Liberty

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to guide the executive branch in formulating and implementing policies with implications for the religious liberty of persons and organizations in America, and to further compliance with the Constitution and with applicable statutes and Presidential Directives, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom. The Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the United States Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.

Sec. 2. *Respecting Religious and Political Speech.* All executive departments and agencies (agencies) shall, to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury. As used in this section, the term ''adverse action'' means the imposition of any tax or tax penalty; the delay or denial of tax-exempt status; the disallowance of tax deductions for contributions made to entities exempted from taxation under section 501(c)(3) of title 26, United States Code; or any other action that makes unavailable or denies any tax deduction, exemption, credit, or benefit.

Sec. 3. *Conscience Protections with Respect to Preventive-Care Mandate.* The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under section 300gg–13(a)(4) of title 42, United States Code.

Sec. 4. *Religious Liberty Guidance.* In order to guide all agencies in complying with relevant Federal law, the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.

Sec. 5. *Severability.* If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

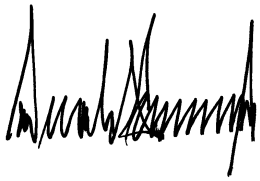
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
May 4, 2017.

[FR Doc. 2017–09574
Filed 5–8–17; 11:15 am]
Billing code 3295–F7–P

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